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# Contents

Federal Register

Vol. 62, No. 32

Tuesday, February 18, 1997

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**Separate Parts In This Issue**



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**Reader Aids**
Additional information, including a list of public laws, telephone numbers, reminders, and finding aids, appears in the Reader Aids section at the end of this issue.

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## CFR PARTS AFFECTED IN THIS ISSUE

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# Rules and Regulations

Federal Register
Vol. 62, No. 32
Tuesday, February 18, 1997



## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

**RIN 0563–AB53**

## Common Crop Insurance Regulations; Cotton Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of cotton. The intended effect of this action is to provide policy changes to better meet the needs of the insured.

**EFFECTIVE DATES:** March 20, 1997.

**FOR FURTHER INFORMATION CONTACT:** Stephen Hoy, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, at 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563–0003 at the proposed final rule stage.

The amendments set forth in this final rule contains information collections that have been cleared by OMB under the provisions of 44 U.S.C. chapter 35.

Following publication of the proposed rule, the public was afforded 60 days to submit written comments on information collection requirements previously approved by OMB under OMB control number 0563–0003 through September 30, 1998. No public comments were received.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity.

The insured must also annually certify to the previous years production or receive an assigned yield. The producer must maintain the production records to support the certified information for at least 3 years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No.12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Tuesday, September 3, 1996, FCIC published a proposed rule in the Federal Register at FR 46401–46403 to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.104 effective for the 1997 and succeeding crop years.

Following publication of that proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. One comment was received from the crop insurance industry. The comment received and FCIC's response are as follows:

*Comment:* One comment recommended that written agreements should be continuous and the valid period be stated in the wording of the agreement.

*Response:* Written agreements are, by design, temporary and intended to address unusual circumstances. If the condition for which a written agreement is needed exists each crop year, the policy or Special Provisions should be amended to reflect this condition. No change has been made to these provisions.

FCIC has made the following changes to the Cotton Provisions:

Section 2(d)(2)—Corrected the provisions regarding center pivot irrigation systems. Language in the proposed rule stated ''* * * that the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage unless separate acceptable records of production from the corners are provided indicating otherwise.'' This provision should have read ''* * * that the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided.'' This clarification makes the wording consistent with other crop provisions.

The contract change date for the 1997 crop year was November 30, 1996. It is, therefore, too late to make this rule effective for the 1997 crop year. The rule will be effective for the 1998 crop year.

List of Subjects in 7 CFR Part 457

Crop insurance, Cotton.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR part 457, effective for the 1998 and succeeding crop years, as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Section 457.104, paragraph 1. Definitions (l), (q)(2) and (s) are revised to read as follows:

### § 457.104 Cotton crop insurance provisions.

* * * * *

1. *Definitions.*

* * * * *

(l) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Cotton must be planted in rows to be considered planted. Planting in any other manner will be considered as a failure to follow recognized good farming practices and any loss of production will not be insured unless otherwise provided by the Special Provisions or by written agreement to insure such crop. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any other spring planted crop.

* * * * *

(q) * * *

(l) * * *

(2) Qualifies as a skip-row planting pattern as defined by the Farm Service Agency (FSA) or a successor agency.

* * * * *

(s) *Written agreement*—A written document that alters designated terms of a policy in accordance with section 13.

* * * * *

2. Section 457.104 in paragraph 2. Unit Division (d)(1) and the first paragraph in (d)(2) are revised to read as follows:

2. Unit Division.

* * * * *

(d) * * *

(1) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:*

Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands an equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:*

In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except that the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be considered part of the unit containing the irrigated acreage. However, non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all other requirements of this section are met.

* * * * *

3. Section 457.104 paragraph 5. Cancellation and Terminations Dates, is revised to read as follows:

5. *Cancellation and Termination Dates.*

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Common Crop Insurance Policy (§ 457.8), the cancellation and termination dates are:

| State and county | Cancellation and termination dates |
|---|---|
| Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof. | January 15. |
| Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagon, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crocket, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, Matagorda Counties, Texas.. | February 28. |
| All other Texas counties and all other States | March 15. |

* * * * *

4. Section 457.104 is amended by adding a new paragraph 13. to read as follows:

13. *Written Agreement.*

Designated terms of this policy may be altered by written agreement. The following conditions will apply:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e).

(b) The application for written agreement must contain all terms of the contract between the insurance provider and the insured that will be in effect if the written agreement is not approved.

(c) If approved, the written agreement must include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election.

(d) Each written agreement will only be valid for one year. If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy.

(e) An application for written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington DC, on February 6, 1997.

Kenneth D. Ackerman,

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 97–3847 Filed 2–14–97; 8:45 am]

**BILLING CODE 3410–FA–P**

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## Rural Utilities Service

## 7 CFR Part 1755

## Telecommunications Program; Postloan Engineering Services Contract

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Utilities Service (RUS), successor to the Rural Electrification Administration (REA), hereby amends its contract for the procurement of postloan engineering services for telecommunications systems. This action codifies the terms and conditions of the agreement to be executed between RUS telecommunications borrowers and consulting engineering firms hired to design and oversee construction of telecommunications facilities financed with RUS financing assistance. Several years have passed since these regulations were last amended and changes in common contract language have occurred. These amendments allow contracts to be more consistent with common practice.

**EFFECTIVE DATE:** This regulation is effective on March 20, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Orren E. Cameron III, Director, Telecommunications Standards Division, Rural Utilities Service, U.S. Department of Agriculture, Ag Box 1598, Washington, DC 20250–1598, telephone number (202) 720–8663.

**SUPPLEMENTARY INFORMATION:**

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12988

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in Sec. 3 of the Executive Order.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the final rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) under control number 0572–0059.

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Director, Program Support Staff, Rural Utilities Service, Ag Box 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

RUS has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under 10.851, Rural Telephone Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS loans and loan guarantees to governmental and nongovernmental entities from coverage under this Order.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Background

Pursuant to 7 CFR part 1753, subpart B, RUS telecommunications borrowers must use a contract to procure engineering services for design and construction of facilities which qualify as ''major'' under that part. The contract required is the RUS Form 217, Postloan Engineering Services Contract.

The Form 217 contract was developed by REA (predecessor to RUS) to meet the specific requirements of rural telecommunications borrowers, and to meet the objectives of the RE Act. It contains provisions to facilitate the use of RUS-required contract forms for the procurement of outside plant, central office equipment, special transmission equipment, and exchange switching equipment buildings. Most of the past revisions of the Form 217 contract have been triggered by major revisions of these other RUS construction contracts. Prior to this action, the RUS Form 217 contract has never been codified.

A major feature of the Form 217 contract is that engineering fees are agreed to in a manner that makes it possible to estimate them accurately in advance. This helps RUS ensure that funding set aside for the construction and engineering of a project will be adequate.

On December 27, 1995, RUS published a proposed rule (60 FR 66936) in the Federal Register with a 30 day comment period. Comments received were considered in developing this final rule. The changes made in this final rule are evolutionary. The duties and responsibilities of the contracting engineer, and its named representatives, are specified in more detail. Design and construction monitoring activities are

more carefully defined. Many terms used throughout the contract form are now defined. Details for handling termination by the owner and the engineer are set forth. RUS Form 506, used for estimating and closing the contract, is made a part of the contract. A number of requirements of 7 CFR part 1753, subpart B, are brought in to the contract, including RUS's reduced progress reporting requirements.

*Comments*

Public comments were received from the Association of Communication Engineers (ACE). The following comments made in several places in § 1755.217, are summarized along with RUS's responses as follows:

*Comment:* The commenter suggested that the word ''All'' is not necessary and should be deleted in the following sections: Form 217 (Section 3, paragraphs 3.05 and 3.23); Form 217b (Section 2, paragraph G and Section 3); Form 217c (Section 3, paragraph D and Section 4); Form 217d (Section 3, paragraph E); Form 217e (Section 2, paragraph E); Form 217f (Section 4, paragraph C–3); Form 217g (Section 1, paragraphs G and I)

*Response:* RUS is of the opinion that ''all'' is necessary to fully specify the requirements.

*Comment:* The commenter suggested that the word ''Engineer'' be deleted after the word ''Resident'' in the following sections: Form 217 (Section 3, paragraph 3.09); Form 217e (Section 2, paragraph G); Form 217g (Section 1, paragraphs B, B–1, B–2, B–4, B–5, and C; Section 5, paragraph C)

*Response:* RUS agrees and has made the changes.

*Comment (Form 217b Section 2, paragraph I; Form 217c Section 3, paragraph G; and Form 217d Section 3, paragraph F):* The commenter stated that the last sentence of these paragraphs is in conflict with the next to the last sentence of Section 1, paragraph A of Form 217g, and should be deleted and the next to last sentence of Form 217g, Section 1, paragraph A, should be inserted.

The commenter further stated that AIA form documents, NSPE form documents, and form documents of other professionals involved in the construction industry, as well as insurers who insure those professionals, have repeatedly attempted to make clear that design professionals have no responsibilities for a contractor's safety practices. Owner insurers have taken the same stance as to owner responsibilities for a contractor's safety practices. This sentence will potentially be interpreted to impose a duty on the engineer to determine whether a contractor practice that the engineer observes is in fact safe. Will a person injured by a contractor's practice be able to sue the engineer because the engineer observed the practice but did not recognize that it was unsafe but should have? In addition, the engineer's obligation to ''consult'' with the contractor is not clear in its scope. Does it mean that the engineer is to consult with the contractor about how to conform the contractor's practice to safety standards? Will a person injured by a contractor's safety practice be able to sue an engineer because the engineer did not properly ''consult'' with the contractor about the practice. Finally, the sentence suggests that the owner has some responsibility for safety practices of the contractor. That suggestion derives from the implication that a report is to be made to the owner so that the owner can take some action to address safety. If the owner takes no action, is the owner now liable to someone who is hurt as a result?

*Response:* RUS does not believe there is a conflict when describing safety matters that occur and that are resolved routinely between an engineer and a contractor during a construction project. RUS believes that the contract language reflects the appropriate responsibilities among the parties involved in the job.

*Comment (Form 217b Section 6, paragraph A; Form 217c Section 6, paragraph A; Form 217d Section 5, paragraph A; Form 217f Section 5, paragraph B):* The commenter suggested that ''(6) services related to RUS Form 773 Contracts.'' be added because RUS Form 773 contracts have not been addressed and probably should be.

*Response:* 7 CFR 1753 provides specific details on the required engineering services, whether the construction is classified as major or minor, and what RUS construction contract form is to be used. Therefore, it is inappropriate to single out a specific form, such as RUS Form 773, in the generalized 217 Engineering Services Contract.

The following comments received from ACE pertaining to individual portions of § 1755.217 are summarized along with RUS's responses as follows:

*RUS Form 217*

*Comment (Section 1, Definitions):* In the definition of ''Inspect,'' the commenter suggested that the word ''observe'' be substituted for ''examine'' stating that observe is used in most AIA, NSPE and ACEC documents.

*Response:* RUS believes that ''observe'' does not express the degree of inspection expected, but can imply that the inspection only covers the obvious. ''Examine'' implies looking beyond the visually obvious and looking to the true condition of the construction. RUS believes that ''examine'' best describes the degree of inspection RUS historically has expected and continues to expect for government funded construction.

*Comment (Section 1, Definitions):* In the definition of ''Inspector,'' the commenter suggested that the word ''Engineer'' be deleted after the word ''Resident'' since some state statutes prohibit the use of the title engineer except as it refers to a registered professional. A non registered engineer cannot be delegated engineering responsibilities that are not under the direct control and approval of a registered professional. ASCE, AIA, NSPE and ACEC documents all use the title Resident alone.

*Response:* RUS agrees and has made the change.

*Comment (Section 1, Definitions):* In the definition of ''Resident Engineer,'' the commenter suggested that the word ''Engineer'' be deleted after the word ''Resident,'' the word ''engineering'' omitted after the phrase ''on site'' and the phrase ''of the Engineer'' added after the word ''responsibilities.'

*Response:* RUS agrees and has made the changes.

*Comment (Section 2, paragraph 2.02):* The commenter suggested that the word ''engineering'' be inserted before ''assistance,'' before ''service'' and before ''advice and assistance'' stating that this change would make it clear that the engineer is not retained to provide legal, accounting or other kinds of assistance, service or advice. The commenter also suggested that the word ''all'' be deleted before ''services'' since it is not necessary to fully describe the responsibilities and could be interpreted as having connotations beyond the intended scope. In addition, the commenter suggested that the phrase ''requested by the Owner'' be inserted after the word ''services'' to identify the source of the request for assistance.

*Response:* RUS believes that the word ''all'' is necessary to fully specify the requirement. RUS agrees with the remainder of the comment and has made the changes.

*Comment (Section 3, paragraph 3.03):* The commenter suggested that the words ''Complete and'' be deleted before ''detailed'' stating that ''complete and detailed'' is redundant. Complete is a word that cannot be specifically identified (i.e., what is complete?). Detailed, however, can be specifically identified as it relates to plans and specifications.

*Response:* RUS does not believe that the words ''complete'' and ''detailed'' are redundant. Plans and specification may be detailed without being complete.

*Comment (Section 3, paragraph 3.08 (1)):* The commenter suggested that the phrase ''Final Record'' be substituted for the phrase ''As Built.'' since this phrase better describes the end product.

*Response:* RUS agrees and has made the change.

*Comment (Section 3, paragraph 3.15):* The commenter suggested that the phrase ''or maximum allowed by statute, whichever is less'' be added after the words ''per annum'' because some states have limits as to the allowable interest rate.

*Response:* RUS is not convinced that the addition of this phrase is necessary. Where there is such a maximum, it can be entered in the contract.

*Comment (Section 3, paragraph 3.15):* The commenter suggested that the sentence which begins ''Such compensation shall be paid'' is not clear and should be deleted. It is unclear whether it means that payment of an invoice is not due until 10 days after interest on the invoice is calculated, or that interest is not due until 10 days after the interest has been calculated.

*Response:* RUS has replaced ''compensation'' with ''interest'' to clarify the meaning.

*Comment (Section 3, paragraph 3.22):* The commenter suggested that the last sentence in the paragraph should be deleted or rewritten to insure that the engineer is compensated for expenses incurred beyond his control. If the Engineer incurs costs as a result of Owner delays, contractor delays or acts of God, then he should be compensated (i.e., Resident and Inspector time when rain delays occur or when contractor has equipment breakdown, etc.).

*Response:* RUS believes this sentence is necessary as written because the Form 217 is a contract between the Engineer and the Owner and does not address other parties.

*RUS Form 217a*

*Comment (Section 1, paragraph A):* The commenter suggested that the phrase ''Project Schedule'' be inserted after the phrase ''Loan Design'' because the Project Schedule is an important element of the total project and should be so recognized.

*Response:* RUS agrees with this comment and has made this change recognizing, however, that Project Schedules are not always prepared and therefore, adding the phase ''if developed'' after ''Project Schedule.''.

*Comment (Section 2):* The commenter suggested that the ''Owner's'' or ''the Owner'' be inserted before the word ''obtaining'' in both places where it appears and the words ''without limitation'' be changed to ''by way of illustration.'' Without these changes, this is an overly broad statement of what can reasonably be expected of an engineer.

*Response:* RUS has reworded this paragraph in accordance with the comment, but does not agree that ''without limitation'' should be deleted.

*RUS Form 217b*

*Comment (Section 2, paragraph H):* The commenter suggested that ''contractor'' or ''Contract Installer'' be used in lieu of ''Installer.''

*Response:* RUS agrees and has reworded the paragraph in accordance with the comment.

*Comment (Section 5, paragraph B):* The commenter suggested that the phrase ''including applicable sales and use taxes'' be inserted after ''materials'' in both places in the last sentence. Even though this has been a long standing interpretation by RUS, it should be so stated to avoid future misunderstandings.

*Response:* RUS does not believe this addition is appropriate because compensation to reflect the collection of sales and use taxes is not necessary.

*RUS Form 217c*

*Comment (Section 3, paragraph E):* The commenter suggested that the phrase ''assure that the Contractor comply'' be deleted and replaced by the phrase ''to determine the Contractor's proposed compliance'' since it would be impossible to determine or assure any kind of compliance at a preinstallation meeting.

*Response:* RUS believes that this paragraph reflects RUS' intentions.

*RUS Form 217e*

*Comment (Section 2, paragraph C):* The commenter suggested that the phrase ''in writing'' be inserted after ''notifying the Engineer'' to avoid a potential conflict.

*Response:* RUS agrees and has made the change.

*Comment (Section 2):* The commenter suggested that paragraph J be added as follows: ''The Engineer with the approval of the Owner shall have the option of performing staking on the project in urban and congested areas on a time and expense basis consistent with Table 2 of this Agreement. Urban and congested area staking shall be defined as any area containing one or more of the following characteristics:

1. Restricted Corridor
2. One or more existing buried telephone cables on the same side of the road where staking is to occur.
3. Other utilities (i.e., gas, water, sanitary sewer, buried Power Cable, etc.) on the same side of the road where staking is to occur.
4. Right-of-way restrictions imposed by some state Departments of Transportation.

The commenter further stated that in urban and congested areas, it is not in the best interest of the Owner or the Engineer to perform staking for a per mile fee. Congested area staking often requires extensive location of existing facilities to determine where and if additional facilities can be placed. The contract should not be structured toward the Owner gaining a windfall at the Engineer's expense or the Engineer gaining a windfall at the Owner's expense. This option should be incorporated into the Proposed 217e to allow for time and expense staking where it would be in the best interest of the Owner and Engineer jointly.

*Response:* RUS does not agree with the suggested addition because the situations listed are not unique. However, RUS does recognize that there are special circumstances where time and expenses for staking are warranted and has changed the wording accordingly.

*RUS Form 217f*

*Comment (Section 4, paragraphs B–1 and B–2):* The commenter suggested that the phrase ''or electronic equivalent'' be inserted after the word ''system.'' Since tracings are no longer used by a number of Owners, this phrase should be included to recognize new media.

*Response:* RUS does not believe this is appropriate since not all the recipients of the plans and specifications may have the necessary equipment/software to be able to use the electronic equivalent provided.

*Comment (Section 5, paragraph B):* The commenter stated that rebidding is covered in paragraph C4, not C3, of Section 4.

*Response:* RUS has made the appropriate changes in the paragraph.

*RUS Form 217g*

*Comment (Section 1, paragraph A–3):* The commenter suggested that the word ''reject'' be replaced by the phrase ''recommend to the Owner that'' and the phrase ''be rejected'' be added after the word ''specifications.'' Since the Construction Contract is between the Owner and the Contractor, the Owner has the ultimate authority to accept or

reject. The engineer only makes recommendations.

*Response:* RUS believes that the Engineer, as the agent of the Owner, should have this authority and responsibility.

*Comment (Section 1, paragraph A–4):* The commenter suggested that the word ''reject'' be replaced by the phrase ''recommend to the Owner rejection of.'

*Response:* RUS believes that the Engineer, as the agent of the Owner, should have this authority and responsibility.

*Comment (Section 1, paragraph B–5):* The commenter suggested that this paragraph be omitted and the number of Residents and Inspectors be stated on the estimated RUS Form 506. This would probably clear up some confusion that has come up on previous occasions with Owners.

*Response:* The reason for this paragraph is to highlight the number of Residents and Inspectors that the Engineer and the Owner agree will be used on the project. Relegating this information to Form 506 would make this decision unilateral on the part of the Engineer.

*Comment (Section 3, paragraphs A–1 and B–1):* The commenter suggested that the phrase ''As Constructed'' be changed to ''Final Record'' since the term ''As Constructed'' depicts] a degree of total information that cannot be assured by the Engineer.

*Response:* RUS believes that ''As constructed'' better describes the intent of the cable schematics to include everything constructed in preparation for cutover even if the construction was not part of the project under contract with the Engineer.

List of Subjects in 7 CFR Part 1755

Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

For reasons set out in the preamble, RUS amends Chapter XVII of title 7 of the Code of Federal Regulations as follows:

## PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. Section 1755.217 is added to read as follows:

### § 1755.217 Postloan engineering services contract, RUS Form 217.

Engineering services provided for major construction are to be covered by the Postloan Engineering Services Contract, RUS Form 217. The requirements and procedures for the use of this contract are contained in 7 CFR 1753.17.

Postloan Engineering Services Contract—Telecommunications Systems

AGREEMENT made _____, _____, between _____ (hereinafter called the ''Owner'') and _____ (hereinafter called the ''Engineer'').

In consideration of the mutual undertakings herein contained, the parties hereto agree as follows:

Section 1. Definitions. For purposes of this Agreement the following definitions shall be used:

Administrator. The Administrator of RUS or personnel delegated authority to act for the Administrator.

Borrower's Environmental Report. An environmental study as described in 7 CFR 1794. For the purposes of this contract, this is the level of environmental review as described in 7 CFR 1794 required for the Project by RUS. In most cases of telecommunications construction, this will be a Borrower's Environmental Report.

Contractor. A provider of goods or services for the Project, other than the Engineer.

Construction Administration. The coordination of construction activities.

Construction Drawings. The drawings developed through the Staking used to guide the construction of outside plant facilities.

Cut Sheets. The complete and sequential plans for Cutover.

Cutover. The orderly integration of new facilities with existing facilities.

Description of Project. The work and facilities listed by principal subdivisions in Table 1.

Inspect. To monitor and examine the work of the Contractor, compare the work to the contract, and note the details and quantities of construction on records and progress reports.

Inspector. A competent representative of the Engineer who inspects construction and reports compliance or noncompliance to the Resident.

Loan Design. Supplemental information which supports a loan application, as described in 7 CFR 1737.32.

Marker. A physical indicator at the construction site to guide the Contractor in construction of facilities.

Project. The telecommunications construction and procurements financed by a particular RUS loan.

Resident. The competent representative of the Engineer who is delegated full time ''on site'' Construction Administration responsibilities of the Engineer.

Staking. The determination of the approximate location of the facilities to be placed and creation of schematic drawings which show the facilities located with respect to the physical terrain.

Work Sector. A localized portion of the Project.

Section 2. General

2.01 Financing of the Project. All or part of the financing of the Project, including costs of materials, construction, installation, and engineering, shall be by a loan administrated by RUS.

If the Project is financed in part by the Rural Telephone Bank, an agency of the United States of America, the references in this Agreement to ''The United States of America'' and the ''Government'' shall mean the ''Rural Telephone Bank'' as well, and the references to the ''Administrator'' shall mean the ''Governor'' of the Rural Telephone Bank as well. If the Project is financed wholly by the Rural Telephone Bank, the references to ''The United States of America'' and the ''Government'' shall mean the ''Rural Telephone Bank'' and the references to the ''Administrator'' shall mean the ''Governor'' of the Rural Telephone Bank.

2.02. Compliance with Regulations. The objective of this Agreement is for the Owner to obtain engineering assistance in completing a Project, while complying with RUS postloan construction regulations. The Engineer shall, therefore, perform all engineering services requested by the Owner hereunder, and render engineering advice and assistance, so as to enable the Owner to comply with 7 CFR Part 1753 and other applicable RUS regulations.

2.03 General Obligation. The Engineer shall, consistent with sound professional practices, diligently and competently render the engineering services required in this Agreement. These engineering services shall be reasonably necessary or advisable for the expeditious, economical, and sound design and construction of the Project listed in Table 1 by means of the services described in this agreement and its attachments. The Engineer shall also render other preparatory work as is necessary to place such portion of the Project in service, except where such duties are excluded from the terms of this Agreement. The enumeration of specific duties and obligations to be performed by the Engineer and included herewith, shall not be construed to limit the foregoing general undertaking of the Engineer, with reference to such portion of the Project.

2.04 Description of Project. The Project shall consist of the subdivisions of the work and facilities listed by exchanges in Table 1 attached hereto.

Section 3. Miscellaneous

3.01 Insurance. The Engineer shall take out and maintain throughout the contract period the minimum insurance as required in Subpart C of 7 CFR part 1788 in effect at the date of this Agreement.

3.02 Project Schedule. The Engineer shall prepare in collaboration with the Owner, a work and progress report schedule to facilitate coordination of activities for Cutover of the Owner's Project. The Engineer shall report construction progress to the Owner monthly during all times when one or more contracts are open.

3.03 Plans and Specifications. Complete and detailed plans and specifications, drawings, maps and other engineering documents as required for the construction of the Project (all of the foregoing being herein sometimes collectively called the ''plans and specifications''), shall be prepared by the Engineer, pursuant to the various

attachments to this Agreement, and made a part hereof.

3.04 Scope of Services. The Engineer shall not be obligated to perform any services for the Project or any part thereof except to the extent that the Project as defined in Table 1, (or the parts thereof and the services related thereto) are delineated in (1) the attachments to this Agreement and (2) the plans and specifications approved by the Owner and the Administrator, as they may be amended from time to time, prepared pursuant to this Agreement.

3.05 Standards. All maps, drawings, plans, specifications, estimates, studies and other engineering documents required to be prepared or submitted by the Engineer under this Agreement shall conform to the applicable standard specifications and other forms prescribed by the Administrator and in effect at the date of this Agreement.

3.06 Termination by Owner. The Owner may at any time terminate this Agreement by giving notice to the Engineer, in writing, to that effect not less than thirty (30) days prior to the effective date of termination specified in this notice. Such notice shall be deemed given if delivered or mailed to the last known address of the Engineer. From and after the effective date specified in such notice this Agreement shall be terminated.

When termination is initiated by the owner, compensation for services hereunder shall be computed as far as possible in accordance with the provisions of the applicable attachment to this Agreement. To the extent that the provisions of any such attachment cannot be applied because construction is incomplete at the effective date of such termination, then the Engineer shall be paid for engineering services in respect to such incomplete construction, a sum which shall bear the same ratio to the compensation which would have been payable under the provisions of any such attachment to this Agreement, if such construction had been completed. If requested by the Owner, the Engineer shall submit to the Owner in duplicate a certified statement of the Engineer's actual expenses in respect of such incomplete construction. All compensation invoiced by the Engineer and payable under this paragraph shall be due and payable thirty (30) days after the approval by the Owner and the Administrator of the amount due. In any case, compensation shall be due 30 days after the date Project documentation is delivered to the Owner under paragraph 3.08 of this Agreement.

3.07 Termination by the Engineer. The Engineer shall have the right, by giving to the Owner not less than thirty (30) days notice in writing, to terminate this Agreement if the Engineer shall have been prevented by conditions beyond the control and without the fault of the Engineer: (i) from commencing performance of this Agreement for a period of twelve (12) months from the date of this Agreement; or (ii) from proceeding with the completion of full performance of any remaining services, required of the Engineer pursuant to this Agreement, for a period of six (6) months from the date of last performance by the Engineer of other services required pursuant to this Agreement. From and after the effective date specified in such notice this Agreement shall be terminated, except that the Engineer shall be entitled to receive compensation for services performed hereunder, computed and payable in the same manner as set forth in paragraph 3.06.

3.08 Project Documents. Upon final payment by the Owner to the Engineer in accordance with the Statement of Engineering Fees, RUS Form 506, the following documents in final form become the property of the Owner and may be used by the Owner for Project operation and future development:

1. ''Final record'' system maps, in master form (electronic or original hard copy)
2. Cable schematics
3. Construction sheets
4. Cable assignment sheets
5. All contract documents including attached plans and specifications and final inventories.

All other documents and engineering records, including preliminary forms of the above documents, remain the property of the Engineer.

Upon termination of this Agreement the Engineer shall deliver to the Owner at a mutually agreeable place within 5 working days after the date of termination all Project documents (electronic or original hard copy) including records, map tracings, plans and specifications, test data, and field notes.

If requested by the Owner upon completion of the Project, the Engineer shall deliver to the Owner those documents which are the Owner's property, at a mutually agreed upon place and time.

3.09 Employee's Qualifications. The obligations and duties to be performed by the Engineer under this Agreement shall be performed by persons qualified to perform such duties efficiently. The Engineer, if the Owner shall so direct, shall promptly replace any Resident or other person employed by the Engineer in connection with the Project.

For information of the Owner and the Administrator, the Engineer shall file with the Owner statements signed by the Engineer of the qualifications, including resumes of specific experience, and the duties to be assigned to each Resident, Inspector and such other personnel assigned to the Project as may be requested by the Owner and Administrator.

The term Resident and Inspector, as used in this Agreement, shall mean a person properly trained and experienced to perform the services required under the terms of this Agreement, and does not mean that the person performing those duties must be a licensed or a registered professional engineer.

3.10 License. The Engineer shall comply with all applicable statutes pertaining to engineering and warrants that _____ (Fill in name of individual) who shall be in responsible charge of the Project possesses license number _____ issued by the State of _____ on the _____ day of _____.

3.11 Payments of Engineer's Employees. For each invoice the Engineer, if requested by the Owner, shall furnish to the Owner as a prior condition to payment, a certificate to the effect that all salaries or wages earned by the employees of the Engineer in connection with the Project have been fully paid by the Engineer up to and including a date not more than thirty (30) days prior to the date of such invoice. Before final payment under this Agreement the Engineer shall furnish to the Owner a certificate that all of the employees of the Engineer have been paid for services rendered by them in connection with the Project, and that all other obligations which might become a lien upon the Project have been paid.

3.12 Engineer's Records. The Owner and the Administrator shall have the right to Inspect and audit all payrolls, records, and accounts of the Engineer relevant to the work performed for the purposes of this Agreement and the Engineer agrees to provide all reasonable facilities necessary for such inspection and audit.

3.13 Compensation. For the purpose of this Agreement, compensation for each type of work covered by the attachments and thereby made a part of this Agreement shall be as outlined in said attachments except where compensation is listed as being a ''time and expense'' basis, in which case the rates in Table 2 attached hereto (or as subsequently modified by approved amendments to this Agreement) shall apply.

3.14 Taxes. Any taxes or levies (excluding Federal, State, and local income taxes) which may be assessed against the Engineer for services performed or payments for services performed by the Engineer per this Agreement shall be in addition to the compensation set forth in the attachments to this Agreement. Such taxes or levies when paid by the Engineer shall be stated separately on all invoices and paid by the Owner.

3.15 Interest. Interest at the rate of _____ percent (_____%) per annum shall be paid by the Owner to the Engineer on any unpaid balance due the Engineer, commencing thirty (30) days after the receipt of the Engineer's invoice, provided that the delay in payment beyond such time shall not have been caused by any conditions within the control of the Engineer. Such interest shall be paid ten (10) days after the amount of interest has been determined by the Engineer and the Owner. The start date of interest accrual is irrespective of the date of the Owner's approval of the invoice, but the interest computation shall be based on the invoice approved by the Owner.

3.16 Non-Assignment. The obligations of the Engineer under this Agreement shall not be assigned without the approval in writing of the Owner and the Administrator.

3.17 Attachments. The following listed attachments, when checked in appropriate boxes, are attached to and made a part of this contract, by this reference:

____ RUS Form 217a—Project Design, Assistance and Coordination;
____ RUS Form 217b—Central Office Equipment Engineering Services;
____ RUS Form 217c—Transmission Facilities Engineering Services;
____ RUS Form 217d—Building Engineering Services;
____ RUS Form 217e—Outside Plant Staking Services;
____ RUS Form 217f—Outside Plant Contract Document Phase Engineering Services; and

___ RUS Form 217g—Outside Plant Construction Phase Engineering Services.

3.18 Service Addition. When a service listed in paragraph 3.17 above is added to this contract after execution, an amendment to the Contract is required.

3.19 Engineering Fee. The Engineer shall provide an initial estimate, monthly updates and a final statement of engineering fees using RUS Form 506, Statement of Engineering Fees, or a facsimile thereof. Where a fixed amount or percentage is used in the attachments checked in section 3.17 above, the same fixed amount or percentage shall be used in the statement of engineering fees.

3.20 Contract Amendment. When the total engineering fee exceeds the initial contract estimate by 20% or more, an amendment to the contract shall be required as set forth in 7 CFR Part 1753.

3.21 Compensation for Corrections. No compensation shall be due or payable to the Engineer, pursuant to this Agreement, for any engineering services performed by the Engineer in connection with effecting of corrections to the design or construction of the Project, when such corrections are required as a direct result of failure by the Engineer to properly fulfill one or more of the Engineer's obligations as set forth in this Agreement.

3.22 Force Majeure. The Engineer shall not be held responsible for Project delays which are a result of Owner delays, Contractor delays or acts of God. The Engineer shall not be entitled to additional compensation unless the delays are the result of the Owner's negligence.

3.23 Contract Beneficiaries. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Owner, the Engineer and the Administrator, and all duties and responsibilities undertaken pursuant to this Agreement shall be for the sole and exclusive benefit of the Owner, Engineer and Administrator and not for the benefit of any other party. This paragraph does not relieve the Engineer of any obligation or responsibilities conferred upon licensed engineers under State law.

3.24 Addenda. Any addenda required for this contract should be placed before Table 1.

3.25 Contract Completion and Closeout. Upon completion of all services covered by this Contract, the Engineer shall execute the Statement of Engineering Fees, RUS Form 506, and submit copies to the Owner as prescribed under 7 CFR 1753 Subpart B.

*In witness whereof,* the parties hereto have caused this Agreement to be duly executed.

_____
Owner
By _____
President
ATTEST: _____
Secretary

_____
Engineer
By _____
President, Partner (Strike out inapplicable Designation—If partnership, all partners shall sign)
ATTEST: _____
Secretary

## Table 1.—Description of Project

[Attach supplemental sheets, as required]

___EXCHANGE
MILEAGE OF OUTSIDE PLANT___
EQUIPMENT BUILDING[1]___
CENTRAL OFFICE EQUIPMENT[1]___
ASSOCIATED FACILITIES[2]___
OTHER[3]___
EXCLUDED SERVICES[2]___

[1] Insert ''new'' or ''additional'' or ''none'' as appropriate.
[2] Insert ''none'' or list as appropriate.
[3] Describe.

## TABLE 2.—SCHEDULE OF TIME, EXPENSE AND EQUIPMENT USAGE RATES, DATED _____

1. Time Rates. Includes all costs associated with the employees except for those itemized in Paragraph 2, below.
Job Classification and Employee Name, if Known _____
Hourly Billing Rate _____ (Attached supplemental sheet, as required)
2. Expense Rates. These shall include subsistence expense, if any, paid to (or on behalf of) employees; plus reasonable employee transportation costs; plus the cost of printing (including mailing and transportation expenses), telephone, facsimile, and other materials and equipment related to the Project.
3. Test Equipment and Computer Usage Rates. Description of Equipment _____ Hourly Billing Rate _____ (Attached supplemental sheet, as required)
4. Review of Rates. To the extent that the completion date of the Agreement, to which this Table 2 applies, shall extend 12 months beyond the date when this Agreement is originally executed; and on each subsequent anniversary of such Agreement this schedule of rates shall be verified or modified in writing by the Parties, to new rates mutually agreeable to the Parties to such Agreement, until Completion or Termination of such Agreement as provided therein.
5. Information for Owner. With each invoice for payment, the Engineer shall furnish the Owner information of the type outlined in a jointly approved format similar to that shown in Exhibit A.
6. Compensation Payment. Unless otherwise specified in this Agreement, compensation payable pursuant to Table 2 shall be due and payable ten (10) days after approval of the Owner of the service performed and the invoice of the Engineer, including the detail breakdown of the cost by the portion of the Project and section of the contract for which the service was performed. The Engineer shall be notified, within ten (10) days of receipt of invoices, of any discrepancies which require correction or addition as precedent for payment of such invoices by the Owner.

Exhibit A

*Suggested Information and Format for Time & Expense Billing*

Certificate of Time, Expense & Equipment Usage Charges

Project Designation:
Postloan Engineering Contract, RUS Form 217:
Name: _____
Dated: _____
Classification: _____
Invoice period ending: _____
Date _____
Service Performed[1] _____
  Hourly Rate ___
  Number of Hours ___
  Extended Costs ___
Miles Driven ___
  Cost Per Mile ___
  Extended Costs ___
Other Transportation ___
  Air Travel ___
  Other (Explain) ___
  Extended Costs ___
Lodging _____
Subsistence _____
Computer _____
  Rate ___
  Hours ___
  Extended Costs ___
Date: ___
EQUIPMENT RENTAL:
COE Test Equipment _____
  Hourly Rate ___
  Number of Hours ___
  Extended Costs ___
O. P. Test Equipment _____
  Hourly Rate ___
  Number of Hours ___
  Extended Costs ___
Transmission Testing _____
  Hourly Rate ___
  Number of Hours ___
  Extended Costs ___
OTHER EXPENSES:
Telephone Charges _____
Facsimile Charges _____
Printing _____
  Construction Sheets ___
  Maps ___
SUBMITTED (by Engineer): _____
Title _____
Date _____
APPROVED (by Owner): _____
Title _____
Date _____

**BILLING CODE 3410–15–P**

[1] Service performed to be included by description of activity and by reference to paragraph number in RUS Form 217 Attachment. Example: Pre-Bid Conference: 217c 3 refers to conducting Pre-Bid Conference.

**U.S. Department of Agriculture**
**Rural Utilities Service**

## STATEMENT OF ENGINEERING FEES
## TELECOMMUNICATIONS

**INSTRUCTIONS - See 7 CFR Part 1753.17(f)**

**PROJECT DESIGNATION**

**CONTRACT NO.** | **DATE**

| CONTRACT SECTION | ESTIMATED | INVOICED AND APPROVED | FINAL |
|---|---|---|---|
| Form 217a - Project Design, Assistance and Coordination | | | |
| A. Section 1. Project Design | | | |
| B. Section 2. Assistance to Owner | | | |
| C. Section 3. Coordination | | | |
| D. Section 4. Plant Records | | | |
| Form 217a Subtotal | | | |
| Form 217b - Central Office Equipment Engineering Services | | | |
| A. Section 1. Review of Requirements | | | |
| B. Section 2C. Rebidding | | | |
| C. Additions, Modifications, Relocations, or Removals | | | |
| D. Sections 2F, 2H and 2I and Section 3 | | | |
| E. For each new Central Office Equipment contract or Force Account Proposal an amount equal to: _____ percent (____%) of first $100,000 | | | |
| Plus _____ percent (____%) of next $300,000 | | | |
| Plus _____ percent (____%) of the balance | | | |
| F. For each Installation Only contract: _____ percent (____%) | | | |
| Form 217b Subtotal | | | |
| Form 217c - Transmission Facilities Engineering Services | | | |
| A. Section 1. Review of Requirements | | | |
| B. Additions, Modifications, Relocations, or Removals | | | |
| C. Section 3A. Rebidding | | | |
| D. Sections 3E, 3F and 3G | | | |
| E. Section 4. Tests | | | |
| F. For each new Transmission Facilities contract or Force Account Proposal an amount equal to: _____ percent (____%) of first $50,000 | | | |
| Plus _____ percent (____%) of next $150,000 | | | |
| Plus _____ percent (____%) of the balance | | | |
| G. For each Installation Only contract: _____ percent (____%) | | | |
| Form 217c Subtotal | | | |
| Form 217d - Building Engineering Services | | | |
| A. Section 1. Review of Requirements | | | |
| B. Section 3B. Rebidding | | | |
| C. Additions, Modifications, Relocations, or Removals | | | |
| D. Sections 3F and 3G | | | |
| E. For each new Building contract or Force Account Proposal an amount equal to: _____ percent (____%) of first $50,000 | | | |
| Plus _____ percent (____%) of the balance | | | |
| Form 217d Subtotal | | | |
| Form 217e - Outside Plant Staking Services | | | |
| A. Section 1. Review of Requirements | | | |
| B. Section 2C. Changes | | | |
| C. Section 2I. Joint Use or Joint Occupancy | | | |
| D. Replacement of Markers | | | |
| E. For Staking: | | | |
| 1. _____ miles at $ _____ per mile of existing buried plant to be modified | | | |
| 2. Plus ____ miles at $ _____ per mile of new buried plant | | | |
| 3. Plus ____ miles at $ _____ per mile of underground cable installed in ducts | | | |
| 4. Plus ____ miles at $ _____ per mile of new aerial plant | | | |
| 5. Plus ____ miles at $ _____ per mile of existing aerial plant to be modified | | | |
| 6. Plus ____ miles at $ _____ per mile of new joint use lines | | | |
| 7. Plus ____ miles at $ _____ per mile of existing lines to be removed where no construction or modification work is to be performed | | | |
| 8. Plus ____ service entrances at $_____ per service entrance for each new or modified service entrance | | | |
| 9. Plus ____ subscribers at $_____ per subscriber shown on construction sheets | | | |
| F. Section 2J. Time and Expense Staking | | | |
| Form 217e Subtotal | | | |

**RUS Form 506 (Rev 12-96)**

*"You are not required to respond to this collection of information unless this form displays the currently valid OMB control number."*

| CONTRACT SECTION | ESTIMATED | INVOICED AND APPROVED | FINAL |
|---|---|---|---|
| Form 217f - Outside Plant Contract Document Phase Engineering Services | | | |
| A. Sum of $ _____ or _____ Sections at $ _____ per section | | | |
| Plus _____ Amendments at $ _____ per amendment | | | |
| Plus _____ miles at $ _____ per mile of Project Line | | | |
| B. The Sum of $ _____ for each approved Force Account Proposal | | | |
| C. Section 2. Map Tracings and Other Data | | | |
| D. Section 3. Schematics, Assignments, and Cut Sheets | | | |
| E. Section 4B6. Underground Conduit | | | |
| F. Section 4C3. Pre-Bid Conference and Rebidding | | | |
| G. Section 4D3. Changes to Force Account Proposals | | | |
| Form 217f Subtotal | | | |
| Form 217g - Outside Plant Construction Phase Engineering Services | | | |
| A. Section 1. Construction Phase | | | |
| 1. Section 1B. Residents and Inspectors | | | |
| 2. Section 1C. Pre-Construction Conference | | | |
| 3. Section 1F. Joint Use or Joint Occupancy | | | |
| 4. Section 1G. Tests | | | |
| 5. Section 1H. Connecting Companies | | | |
| 6. Section 1I. Reporting | | | |
| 7. Section 1J. Final Inspection | | | |
| B. Section 2. Final Documents: the sum of $ _____ or _____ Sections at $ _____ per section | | | |
| Plus _____ miles at $ _____ per mile of line included | | | |
| Plus _____ service entrances at $ _____ for each service entrance installed, replaced or modified | | | |
| C. Section 3. Plant Records | | | |
| D. Section 4. Inventory and Appraisal | | | |
| Form 217g Subtotal | | | |
| Form 217 Contract SUBTOTAL | | | |
| TAXES | | | |
| GRAND TOTAL | | | |

## CERTIFICATE OF ENGINEER

*(Complete for Final Statement Only)*

*I, _____, certify that (1) I am the _____ of*
*(Title)*

*_____, the Engineer in a contract entered into between the Engineer and the Owner,*
*(Name of Engineer)*

*_____, for engineering services in a rural telecommunications Project, which Project*
*(Name of Owner)*

*bears the Rural Utilities Service Project designation _____; and that (2) this is a true and correct statement of the fees due under the terms of the engineering service contract; and that (3) all persons employed by the Engineer in connection with the engineering on the Project have been paid in full.*

_____
*(Signature)*

**THIS STATEMENT AND CERTIFICATE IS HEREBY APPROVED**

_____
*(Owner)*

_____ *By:* _____
*(Date)*

**RECOMMENDED BY:**

_____ _____
*(Date)* *(RUS General Field Representative)*

**APPROVED BY:**

_____ _____
*(Date)* *(Chief, _____ Area, Engineering Branch)*

**RUS Form 506 (Rev 12-96)**

BILLING CODE 3410–15–C

Attachment-RUS Form 217a

*Project Design, Assistance and Coordination*

Section 1. Project Design.

A. Design. The Project shall be constructed in accordance with the current Loan Design, Project Schedule (if developed), and Borrower's Environmental Report. Such Loan Design shall be based on the latest applicable criteria as specified by the Owner and the Administrator.

When necessary for the preparation of plans and specifications, the Engineer shall, upon request of the Owner and with the approval of the Administrator: (1) Revise as necessary the Loan Design and Borrower's Environmental Report; (2) prepare or revise as necessary the outside plant design; (3) make measurements and analyses of existing traffic; (4) make tests of existing cable, including the determination of field locations for treatment of existing facilities associated with installation of carrier equipment; and (5) submit the resulting Loan Design and Borrower's Environmental Report to the Owner in a format suitable for approval by the Administrator.

B. Change in Design. If, after the approval of the Loan Design and Borrower's Environmental Report, or plans and specifications by the Owner and the Administrator, it shall be determined by the Owner that any change is required, the Engineer shall prepare such revisions in the Loan Design, Borrower's Environmental Report, and plans and specifications, or any part thereof, as is necessitated by the changes in requirements for service, design criteria, or other reasons arising during the performance of services for the Project.

Section 2. Assistance To Owner. The Engineer, to the extent requested by the Owner, shall assist in the Owner's obtaining agreements and authorizations required for the Project, including without limitation the furnishing of engineering information and drawings and participating in the Owner's obtaining:

A. Toll, EAS, operator assistance, special services and other connecting company commitments;

B. Joint use or joint occupancy agreements with other utilities;

C. Permits for crossing public roads, railroads, navigable streams or bodies of water;

D. Right-of-way authorizations, easements, and other permits necessary for encroachment on public or private lands;

E. Authorizations from regulatory bodies and franchises from public bodies; and

F. Environmental studies and clearances.

Section 3. Coordination. The Engineer, to the extent requested by the Owner, shall coordinate the work of others engaged in the Project, including work performed or supervised by the Owner, architect, and other engineers, to facilitate expeditious and economical completion of the Project. Services pursuant to this section shall be in addition to, and shall not include, services required by other provisions of this Agreement.

Section 4. Plant Records. The Owner shall furnish to the Engineer current and accurate plant records. If such records are not available the Owner may direct the Engineer to update existing records to current status. This may include conversion of existing records to a new medium.

Section 5. Compensation. The Owner shall pay the Engineer for services performed pursuant to this RUS Form 217a the ''time and expense'' compensation as defined in Table 2 of this Agreement.

Section 6. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment (RUS Form 217a—Project Design, Assistance and Coordination).

Attachment—Form 217b

*Central Office Equipment Engineering Services*

Section 1. Review of Requirements. Prior to the preparation of plans and specifications, the Engineer shall review with the Owner the current and future requirements of the Project, in respect to central office equipment additions, replacements, modifications or complete new offices. The Engineer, to the extent requested by the Owner, shall prepare such studies as the Owner may require to support the selection by the Owner of the final design plan.

Section 2. Plans and Specifications and Contracts.

A. Preparation of Plans and Specifications. Plans and specifications shall be prepared by the Engineer in accordance with standard RUS specifications and requirements for central office equipment, and shall be submitted to the Owner in a format suitable for approval by the Administrator.

B. Bidders Qualifications. The Engineer shall review with the Owner all Bidder qualifications and shall prepare and furnish to the qualified bidders the plans and specifications upon the conditions provided in the applicable standard RUS contract forms and in accordance with 7 CFR Part 1753.

C. Bid or Proposal. The Engineer shall be available to each prospective bidder for consultation with respect to the details of the plans and specifications and all other matters pertaining to the preparation of the proposals for the supply of equipment or services therefore. All changes to or clarifications of the plans and specifications provided to one prospective bidder shall be provided by the Engineer in writing to all other prospective bidders and to the Owner.

The Engineer shall attend and supervise all technical prebid review meetings and openings of quotes for the furnishing of equipment or services therefor. Where additions to existing equipment are proposed, a quote may be solicited from the original supplier or separate materials and installation contracts may be requested from several suppliers. The Engineer shall carefully check all quotes received and shall render to the Owner assistance in connection with the Owner's consideration of the quotes received so that contracts may be prudently and properly awarded.

The Engineer shall submit in writing to the Owner recommendations of first and second choice of bidders stating the reasons therefor, or, if the analysis of quotes indicates that no quote is satisfactory because of prices or other conditions, the Engineer shall recommend to the Owner that all quotes be rejected, giving reasons therefor. Unless otherwise directed by the Owner, the Engineer shall proceed in respect to rebidding in the manner provided for herein for the initial bidding.

D. Award of Contract. The Engineer shall prepare and furnish to the Owner three (3) copies of a detailed tabulation of all the bids or quotes and a tabulation showing the bidders' names and totals. The Owner shall submit to the Administrator the bidding information required for approval of the award of the contract by the Administrator. Upon receipt of notice from the Owner of the Administrator's approval of the award of the contract, the Engineer shall prepare contracts in accordance with 7 CFR Part 1753.

E. Contract Amendments. If, after the equipment contract and the installation contract have been approved by the Owner and the Administrator, it shall be determined by the Owner that any change or changes in the plans and specifications are advisable, the Engineer shall prepare and submit a contract amendment in accordance with 7 CFR Part 1753.

F. Customer Information and Engineering Meeting. If necessary, the Engineer shall arrange, at a mutually agreeable time, a Customer Information and Engineering Meeting with the Owner, Contractor and Engineer to review the Contractor's proposal, equipment lists, software, data requirements, translation requirements, etc. prior to beginning of manufacture.

G. Compliance. The Engineer shall review all equipment lists, manufacturer's drawings, and other data submitted by the Contractor, to determine apparent compliance of such lists, drawings and other data with the approved contract. This shall not relieve the Contractor of its obligation to meet the performance specifications of the contract.

H. Pre-Installation Meeting. The Engineer shall arrange at a mutually agreeable time, a pre-installation meeting between the Contractor, Owner 7144and Engineer, after the

Contractor's installer has arrived at the contract site, to clarify areas of responsibility, check scheduling and to determine the Contractor's proposed compliance with the plans and specifications.

I. Progress Reports. A competent representative of the Engineer shall make periodic visits to the equipment installation site to Inspect the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract. The Engineer shall report at least monthly to the Owner in writing stating the results of Inspections. When the Engineer observes any failure of the executed work or work in progress to comply with the requirements of the contract, this shall be reported to the Owner immediately. These reports shall include suitable recommendations. If the engineer observes an unsafe practice, his only responsibility shall be to consult immediately with the Contractor and if his concerns are not satisfied, to notify the Owner immediately.

Section 3. Tests. The Engineer shall conduct, or cause to be conducted by the installer, such tests of all such equipment as required by the Owner and the Administrator to determine that the equipment meets the performance requirements of the plans and specifications. The Engineer shall make recommendations for the correction of performance or operational difficulties. All cases of performance or operational difficulties due to faulty installation or defective equipment shall be reported to the Contractor, for correction. When the corrections have been made, the Engineer shall retest the equipment. The Engineer shall furnish test equipment, when required, for all required tests or measurements performed by the Engineer.

The Owner and a representative of the Administrator will normally conduct a final inspection of completed construction. When requested by the Owner, a qualified representative of the Engineer shall be present.

Section 4. Final Documents. The Engineer shall prepare or cause to be prepared, and shall submit to the Owner for approval, in a format suitable for approval by the Administrator, complete and detailed final documents as specified in 7 CFR 1753 and a statement showing the total amounts due the Contractor, pursuant to the terms of the contract, including any amendments thereto. The final documents shall be submitted for the Owner's approval within forty (40) calendar days after the completion of construction based on the date on the certificate of completion covered by each central office equipment contract and each installation contract.

Section 5. Compensation.

A. Time and Expense. The Owner shall pay the Engineer ''time and expense'' compensation as outlined in the current Table 2 of this Agreement for: (1) All services performed pursuant to section 1; (2) ''rebidding'' pursuant to paragraph C of section 2; (3) all services in connection with additions to, replacement of components in, modifications of, or removal of, existing central office equipment; (4) all services pursuant to paragraphs F, H, and I of section 2; and (5) all services pursuant to section 3.

B. Percent of Cost. The Owner shall pay the Engineer for all other services performed pursuant to this RUS Form 217b, including final documents, for each central office equipment contract an amount equal to: _____ percent (_____ %) of the first one hundred thousand dollars ($100,000); plus _____ percent (_____ %) of the next three hundred thousand dollars ($300,000); plus _____ percent (_____ %) of the balance of the installed cost of such equipment for each complete new central office equipment contract, and for each installation contract an amount equal to _____ % of such installation contract. Ninety percent (90%) of such sums shall be due and payable ten (10) days after approval by the Administrator of each contract (or force account proposal) and the balance of the compensation shall be due and payable ten (10) days after approval by the Owner and the Administrator of a certificate of completion of installation for each such equipment.

''Installed cost'' shall mean the total cost of labor and materials of the central office equipment as shown on the final inventory documents prepared by the Engineer and approved by the Owner and the Administrator. For a materials only contract, ''installed cost'' shall mean the amount for materials shown on the final inventory documents.

Section 6. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment (RUS Form 217b—Central Office Equipment Engineering Services).

Attachment—RUS Form 217c

*Transmission Facilities Engineering Services*

Section 1. Review of Requirements. Prior to the preparation of plans and specifications for transmission facilities the Engineer shall review with the Owner the up-to-date requirements of the Project, as related to transmission facilities.

Section 2. Plans and Specifications. The Engineer shall prepare, and submit to the Owner in a format suitable for approval by the Administrator, the plans and specifications for the purchase and installation of such transmission facilities in sufficient time to allow normal scheduled delivery and installation of such to coordinate with the schedule of completion of the Project.

Section 3. Contracts.

A. Bid or Proposal. The Engineer shall be available to each prospective bidder for consultation with respect to the details of the plans and specifications and all other matters pertaining to the preparation of the proposals for the supply of equipment or services therefor. All changes to or clarifications of the plans and specifications provided to one prospective bidder shall be provided by the engineer in writing to all other prospective bidders and to the Owner.

The Engineer shall attend and supervise all technical prebid review meetings and openings of quotes for the furnishing of equipment or services therefor. Where additions to existing equipment are proposed, a quote may be solicited from the original supplier or separate materials and installation contracts may be requested from several suppliers. The Engineer shall carefully check all quotes received and shall render to the Owner assistance in connection with the Owner's consideration of the quotes received so that contracts may be prudently and properly awarded.

The Engineer shall submit in writing to the Owner recommendations of first and second choice of bidders stating the reasons therefor, or, if the analysis of quotes indicates that no quote is satisfactory because of prices or other conditions, the Engineer shall recommend to the Owner that all quotes be rejected, giving the reasons therefor. Unless otherwise directed by the Owner, the Engineer shall proceed in respect to rebidding in the manner provided for herein for the initial bidding.

B. Award of Contract. Upon receipt of notice from the Owner of the Administrator's approval of the award of any contract, or bid proposal, the Engineer shall prepare and submit contracts in accordance with 7 CFR Part 1753.

C. Contract Amendments. If, after any such contract has been approved by the Owner and the Administrator, it shall be determined by the Owner that any change or changes in the plans and specifications are advisable, the Engineer shall prepare and submit a contract amendment in accordance with 7 CFR Part 1753.

D. Compliance. The Engineer shall review all equipment lists and manufacturer's drawings, and other data submitted by the Contractor, to determine apparent compliance of such lists, drawings and other data with the approved contract. This shall not relieve the Contractor of its obligation to meet the performance specifications of the contract.

E. Pre-Installation Meeting. The Engineer shall arrange, when requested by the Owner, at a mutually agreeable time, a pre-installation meeting between the Contractor, Owner and Engineer to clarify areas of responsibility, check delivery and completion scheduling and to assure that the Contractor comply with the plans and specifications.

F. Customer Information and Engineering Meeting. The Engineer shall arrange, if necessary, at a mutually agreeable time a customer information and engineering meeting with Owner, Contractor and Engineer to review the Contractor's proposal, equipment lists, software, data requirements, translation requirements, etc. prior to beginning of manufacture.

G. Progress Reports. A competent representative of the Engineer shall make periodic visits to the equipment installation site to Inspect the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with the contract. The Engineer shall report at

least monthly to the Owner in writing stating the results of Inspections. When the Engineer observes any failure of the executed work or work in progress to comply with the requirements of the contract, this shall be reported to the Owner immediately. These reports shall include suitable recommendations. If the engineer observes an unsafe practice, his only responsibility shall be to consult immediately with the Contractor and if his concerns are not satisfied, to notify the Owner immediately.

Section 4. Tests. The Engineer shall conduct, or cause to be conducted, such tests as required by the Owner and the Administrator to determine that the equipment meets the performance requirements of the plans and specifications. The Engineer shall make recommendations for the correction of performance or operational difficulties. All cases of performance or operational difficulties due to faulty installation or defective equipment shall be reported to the Contractor for correction. When the corrections have been made, the Engineer shall retest the equipment. The Engineer shall furnish test equipment, when required, for all required tests or measurements performed by the Engineer.

The Owner and a representative of the Administrator will normally conduct a final inspection of completed construction. When requested by the Owner, a qualified representative of the Engineer shall be present.

Section 5. Final Documents. The Engineer shall prepare or cause to be prepared, and shall submit to the Owner for approval, in a format suitable for approval by the Administrator, complete and detailed final documents as specified in 7 CFR Part 1753 and a statement showing the total amounts due the Contractor, pursuant to the terms of the contract, including any amendments thereto. The final documents shall be submitted for the Owner's approval within forty (40) calendar days after the completion of construction based on the date on the certificate of completion covered by each transmission facilities contract and each installation contract.

Section 6. Compensation.

A. Time and Expense. The Owner shall pay the Engineer ''time and expense'' compensation as defined in the current Table 2 of this Agreement for: (1) All services performed pursuant to section 1; (2) all services in connection with additions to, replacement or removal of components in, modifications of, relocation of existing systems of transmission facilities; (3) ''rebidding'' pursuant to paragraph A of section 3; (4) all services pursuant to paragraphs E, F, and G of section 3; and (5) all services pursuant to section 4.

B. Percent of Cost. The Owner shall pay the Engineer for all other services pursuant to this RUS Form 217c, including final documents, for each contract or force account proposal for new transmission facilities, an amount equal to: _____ percent (_____ %) of the first fifty thousand dollars ($50,000.00); plus _____ percent (_____ %) of the next one hundred fifty thousand dollars ($150,000.00); plus _____ percent (_____ %) of the balance of the installed cost of each such document and for each installation contract an amount equal to _____ % of such document. Ninety percent (90%) of such sums shall be due and payable ten (10) days after approval by the Owner of the document for the purchase or installation of such equipment. The balance of the compensation shall be due and payable ten (10) days after approval by the Owner and the Administrator of a certificate of completion of installation for such equipment.

''Installed cost'' shall mean the total cost of labor and materials of the transmission facilities as shown on the final documents prepared by the Engineer and approved by the Owner and the Administrator. For a material's only contract, ''installed cost'' shall mean the amount for materials shown on the final inventory documents.

Section 7. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment (RUS Form 217c—Transmission Facilities Engineering Services).

Attachment—RUS Form 217d

*Building Engineering Services*

Section 1. Review of Requirements. Prior to the preparation of plans and specifications, the Engineer shall review with the Owner the current and future requirements for buildings to be constructed as a part of the Project.

Section 2. Plans and Specifications. The plans and specifications for the construction of buildings shall be prepared in sufficient time to allow normal completion of construction of the buildings at least thirty (30) days prior to delivery of central office equipment as specified in the central office equipment contract. The plans and specifications shall, unless otherwise directed by the Owner, be prepared in accordance with standard RUS specifications and construction drawings relating thereto. Additionally, the plans and specifications shall include such details as the characteristics of the building site(s) may require, including, without limitation, a plot plan and description of site development work, if any. The plans and specifications shall be submitted to the Owner in a format suitable for approval by the Administrator.

Section 3. Contracts

A. Bidder's Qualifications. After approval of the plans and specifications by the Owner and Administrator, notices shall be sent to prospective bidders in accordance with 7 CFR Part 1753. The names of those so notified shall be forwarded to the Owner at the time such notices are sent. The Engineer shall review with the Owner and the Owner shall approve the qualifications of all prospective bidders. The Engineer shall prepare and furnish to qualified contractors requesting them, the plans and specifications upon the conditions provided in the applicable standard RUS contract forms.

B. Proposals. The Engineer shall be available to each prospective bidder for consultation with respect to the details of the plans and specifications and all other matters pertaining to the preparation of the proposals for the construction of the building(s) or the supply of materials and equipment or services therefor. All changes to or clarifications of the plans and specifications provided to one prospective bidder shall be provided in writing to all other prospective bidders and to the Owner.

The Owner shall return unopened the bids received from bidders not specifically qualified to bid the plans and specifications.

The Engineer shall attend and supervise all openings of bids for the construction of the building(s) or for the furnishing of materials and equipment or services therefor. In the event that less than three (3) bids are received from qualified bidders, the bids shall remain unopened and the Engineer shall notify the Administrator thereof immediately. Unless otherwise directed by the Owner, the Engineer shall proceed, in respect of the rebidding, in the manner provided for herein for the initial bidding. The Engineer shall carefully check all bids received and shall render to the Owner all such assistance as shall be required in connection with consideration of the bids received so that contracts may be prudently and properly awarded.

The Engineer shall submit in writing to the Owner recommendations of first, second and third choice of bidders, stating the reasons therefor, or if the analysis of bids indicates that no bid is satisfactory because of prices or other conditions, the engineer shall recommend to the Owner that all bids be rejected, giving the reasons therefor.

C. Award of Contract. The Engineer shall prepare and furnish to the Owner three (3) copies of a detailed tabulation of all the bids and a tabulation showing the bidders' names and totals of all bids. The Owner shall submit to the Administrator the bidding information required for approval of the award of the contract by the Administrator. Upon receipt of notice from the Owner of the Administrator's approval of the award of the contract, the Engineer shall prepare contracts in accordance with 7 CFR Part 1753.

D. Contract Amendments. If, after the contract has been approved by the Administrator it shall be determined by the Owner that any change or changes in the plans and specifications are advisable, the Engineer shall prepare and submit a contract amendment in accordance with 7 CFR Part 1753.

E. Compliance. The Engineer shall review all shop and manufacturer's drawings, construction detail variations, and other data submitted by the Contractor, to determine apparent compliance of such lists, drawings and other data with the approved contract. This shall not relieve the Contractor of its obligation to comply with the plans and specifications.

F. Progress Reports. A competent representative of the Engineer shall make periodic visits to the construction site to Inspect the progress and quality of the executed work and to determine, in general, if the work is proceeding in accordance with

the contract. The Engineer shall report at least monthly to the Owner in writing stating the results of Inspections. When the Engineer observes any failure of the executed work or work in progress to comply with the requirements of the contract, this shall be reported to the Owner immediately. These reports shall include suitable recommendations. If the engineer observes an unsafe practice, his only responsibility shall be to consult immediately with the Contractor and if his concerns are not satisfied, to notify the Owner immediately.

G. Final Inspection. The Owner and a representative of the Administrator will normally conduct a final inspection of completed construction. When requested by the Owner, a qualified representative of the Engineer shall be present.

Section 4. Final Documents. The Engineer shall prepare, and shall submit to the Owner in a format suitable for approval by the Administrator, complete and detailed final documents as specified in 7 CFR 1753 and a statement showing the total amounts due the Contractor pursuant to the terms of the construction contract, including any approved amendments thereto. The final documents shall be submitted for the Owner's approval within sixty (60) calendar days after the completion of construction based on the date shown on the certificate of completion covered by each contract.

Section 5. Compensation

A. Time and Expense. The Owner shall pay the Engineer ''time and expense'' compensation as defined in the current Table 2 of this Agreement for: (1) all services performed pursuant to section 1; (2) services performed for rebidding pursuant to paragraph B of section 3; (3) all services in connection with additions to or modifications of existing buildings; and (4) inspection of construction pursuant to paragraphs F and G of section 3.

B. Percent of Cost. The Owner shall pay the Engineer for all other services performed pursuant to this RUS Form 217d, including final documents, for each new building contract included in the Project an amount equal to: _____ percent (_____%) of the first fifty thousand dollars ($50,000.00); plus _____ percent (_____%) of the balance of the cost of construction thereof, of which sums ninety percent (90%) shall be due and payable ten (10) days after approval by the Administrator of a contract (or force account proposal) for the construction of the buildings; and the balance of the compensation shall be due and payable ten (10) days after approval by the Owner and the Administrator of a certificate of completion of construction for all such buildings included in the Project (or in a completed section of the Project).

''Cost of construction'' shall mean the total cost of labor and materials (including Owner-furnished materials and labor) used in the construction of such buildings as shown on the final documents prepared by the Engineer and approved by the Owner and Administrator.

Section 6. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment (RUS Form 217d—Building Plans and Specifications and Contracts).

Attachment—RUS Form 217e

*Outside Plant Staking Services*

Section 1. Review of Requirements. Prior to the commencement of Staking, the Engineer shall review with the Owner the current requirements of the Project with respect to outside plant and service entrance Staking. At this review, decisions shall be reached concerning public and private rights-of-way, nominal width of construction corridors, and design status.

Section 2. Staking Requirements

A. General

1. Staking for aerial plant shall include locating the proposed line and marking all new pole and other locations as necessary to construct the facilities.

2. Staking for buried plant shall include locating the proposed facilities indicating all pertinent construction information including details of the construction corridor.

3. Staking for underground plant shall include locating conduit systems, construction corridors, marking manhole sites and detailing all other pertinent information.

4. Staking for service entrances shall include locating protectors on the structure, the routing of aerial or buried entrances and the placement of markers, if required, to indicate construction information.

B. Commencement. The Engineer, with the approval of the Owner, shall determine when Staking of the Project shall begin. The Engineer shall not commence Staking in any area of the Project until the Owner has:

1. Either (a) stated in writing that right-of-way authorizations and easements reasonably required therefor have been procured, or (b) directed the Engineer in writing to perform right-of-way procurement under section 2, paragraph D, of RUS Form 217a—Project Design, Assistance, and Coordination;

2. Identified to the Engineer, by map locations, which line segments shall be staked on public right-of-way and which line segments shall be staked on privately owned right-of-way; and

3. Provided information to the Engineer pertaining to limitations on width of construction corridors for each such line segment.

The Owner shall review with the Engineer, and shall inform the Engineer, which specific lines are to be staked. The Owner shall furnish to the Engineer a current list of all existing and potential subscribers by map location and grade of service for whom service is to be furnished. When requested by the Engineer, the Owner shall also furnish the telephone numbers of the existing subscribers. In determining when to proceed with Staking, farming operations and other relevant conditions shall be taken into consideration so as to minimize the need for restaking. The Owner, when requested by the Engineer, shall furnish a qualified person to accompany each Staking crew for the purpose of negotiating with landowners or tenants with respect to such right-of-way authorizations and easements, widths of construction corridors, and locations of proposed facilities.

C. Changes

1. If, during the progress of Staking by the Engineer, the Owner shall change the routing or location of a particular line segment, the Owner shall as early as practicable, notify the Engineer in writing of such changes. Upon such notice the Engineer shall duly note such change and instruct the Staking crews accordingly. The same procedure shall be followed for changes made in type or quantity of facilities during the Staking phase of the Project.

2. If during the process of Staking, the Engineer determines that the routing of facilities along the right-of-way designated by the Owner would result in high costs of placement due to obstacles, inadequate construction corridors, or other circumstances, the Engineer shall notify the Owner and recommend alternative routing. If alternative routing is approved by the Owner and right-of-way can be obtained, the Engineer shall arrange to stake the facilities along the alternate route.

D. Time of Staking

1. The Engineer shall proceed diligently with Staking and continue therewith in such a manner that, prior to the release of plans and specifications to bidders, the Staking of all outside plant facilities except service entrances shall be complete in order that the plans and specifications shall be complete and accurate.

2. If service entrances are included in the construction contract, Staking of the service entrances shall be completed prior to beginning of construction in a Work Sector. If such Staking is being performed by the Owner, the Engineer shall keep the Owner advised of the status of construction and the Owner shall do the Staking in a timely manner.

3. The Engineer shall perform all restaking made necessary by changes discussed under paragraph C of section 2, above, as necessary to minimize delays in construction.

E. Manner of Staking. The Staking shall be done in a thorough and workmanlike manner such that construction can be completed in accordance with the latest revision of the National Electrical Safety Code, National Electric Code, local and State laws, rules, regulations and orders of regulatory bodies having jurisdiction; and the Loan Design, Borrower's Environmental Report, and specifications approved by the Owner and the Administrator. The Engineer shall in no case stake lines other than those shown in the approved Loan Design except for minor re-routing and minor changes dictated by field conditions, unless such change shall have been previously approved by the Owner and the Administrator. The Engineer shall replace all markers lost or removed prior to or during construction of the Project. All costs, including costs of markers, equipment, and other materials used in connection with the Staking, shall be borne by the Engineer. All markers and existing poles shall be properly identified with corresponding listing on the construction sheets. Where it is probable that the Contractor or the Owner will have difficulty in locating markers, the Engineer shall provide some other suitable means to identify the location. When Staking

service entrances, the Engineer shall give due consideration to the location of the station protector (or network interface device if it incorporates a station protector) in relation to the availability of adequate grounding and the length of the service drop and station wiring.

F. Construction Sheets. The Engineer shall prepare or maintain construction sheets in such standard form as the Owner shall require (and as hereinafter described) to: Serve as the means by which directions are given for the construction of the Project; serve as the permanent plant record by the Owner's facilities as built; and identify adequately the geographical location of the facilities, including non-standard construction corridors and cable placement locations. The Engineer shall enter thereon all pertinent and useful design, specifications and data governing the construction of the Project, including, without limitations:

1. Detailed instructions on the point of attachment of the Owner's facilities on existing pole lines employed in joint use with others;

2. Non-standard depths for installing buried and underground facilities;

3. The presence, but not location of, buried facilities of other utilities when known;

4. The presence of rock when known;

5. Vegetation clearing requirements; and

6. Surface type and surface features of terrain if appropriate.

Copies of construction sheets shall be made available for sale to all prospective bidders in advance of the pre-bid conference. For contract construction five counterparts of the construction sheets shall be supplied by the Engineer to the Contractor for construction use and two copies shall be supplied to the Owner. For force account construction three copies of the construction sheets shall be supplied to the Owner. When revisions in Staking are necessary, the Engineer shall issue copies of the revised construction sheets.

G. Resident. A Resident, with full authority to act for the Engineer per this attachment, shall be maintained by the Engineer at the site of the Project at all times when Staking or other services required under this attachment are being performed at the site of this Project. The Resident may also be engaged in Staking as well as in supervising the Staking activities of other Staking crews of the Engineer. The Engineer shall establish and maintain, in the proximity of the Project, a field office with telephone service at all times when Staking or other services required under this RUS Form 217e are in progress.

H. Reporting. The Engineer shall prepare, execute, and submit to the Owner _____ (insert frequency of reporting—minimal monthly) all estimates, certificates, reports and other documents required to be executed by the Engineer pursuant to the loan contract.

I. Joint Use or Joint Occupancy. In connection with Staking of joint use or joint occupancy facilities the Engineer shall:

1. Prepare and submit to the Owner for approval, detailed information on pole changes, additional poles, and other changes or additions required in existing facilities of other parties to joint use or joint occupancy agreements to accommodate the Owner's facilities; and

2. Coordinate engineering activities under direction of the Owner with other parties to joint use or joint occupancy agreements.

J. The Engineer with the approval of the Owner shall have the option of performing staking on the project under the circumstances described below on a time and expense basis consistent with Table 2 of this Agreement.

1. Less than 10 miles of buried or aerial plant,

2. Emergency restoral of service, or

3. Natural disasters.

Section 3. Compensation. The Owner shall pay the Engineer for services performed pursuant to this RUS Form 217e as follows:

A. Staking Fee. For all services in connection with the Staking of the Project lines provided for in the approved Project design, including lines which, pursuant to the direction of the Owner, with the approval of the Administrator, shall not be constructed, and for all other services outlined in this RUS Form 217e (except as provided in paragraph C of section 3):

1. The sum of _____ dollars ($_____) per mile of existing buried plant Project lines to be modified; plus

2. The sum of _____ dollars ($_____) per mile of new buried plant Project lines; plus

3. The sum of _____ dollars ($_____) per mile of underground cable to be installed in ducts; plus

4. The sum of _____ dollars ($_____) per mile of new aerial Project lines; plus

5. The sum of _____ dollars ($_____) per mile of existing aerial Project lines to be modified; plus

6. The sum of _____ dollars ($_____) per mile of new joint use or joint occupancy Project lines; plus

7. The sum of _____ dollars ($_____) per mile of existing Project lines to be removed where no construction or modification work is to be performed; plus

8. The sum of _____ dollars ($_____) for each new service entrance staked and for which a construction sheet is prepared and each existing service drop to be modified as part of the Project; plus

9. The sum of _____ dollars ($_____) for each subscriber shown on the construction sheets.

For purposes of this section ''modified'' means rearrangements, additions, change of pair assignments, etc., which require preparation of construction sheets to implement.

The length of the Project lines shall be determined by taking the sum of all distances between terminal points for underground cable and buried cable or conductor, and new service entrances added as part of the Project and all distances between pole markers or from center to center of poles carrying aerial conductor or cable, including joint use or joint occupancy poles, plus the vertical distances parallel to vertical cable runs for aerial cable installations.

B. Time and Expenses. The Owner shall pay the Engineer ''time and expense'' compensation as defined in the current Table 2 of this Agreement for all services performed in this RUS Form 217e in connection with: section 1; paragraph C of section 2; paragraph I of section 2; paragraph J of section 2; and for the replacement of markers made necessary by causes beyond the control of the Engineer.

C. Payments. Compensation under paragraph A of this section 3 shall be due and payable ten (10) days after delivery to the Owner, on a monthly basis, a copy of the construction sheets representing the Staking completed during that month and a recapitulation of the mileage of the various types of line covered by such construction sheets and by previous construction sheets for which compensation has been requested.

The Staking shall be subject to review and inspection by the Owner and the Administrator. The Engineer, when notified to do so by the Owner or the Administrator, shall correct such Staking as the review and inspection may indicate to be necessary. Such review and payments shall not constitute unqualified approval of the Staking. Where restaking is required for reasons within the control of the Engineer, no additional compensation shall be payable.

The compensation payable for lines actually constructed, shall be adjusted to the number of units actually constructed or actually completed as part of the construction of the Project, as reflected in the final documents. Compensation payable for lines which have been staked, but which shall not be constructed, shall be determined from the construction sheets as covered by line abandonment order.

D. Plant Retained in Place. Compensation under this section, for Staking existing Project lines on which modification work is to be performed, shall include compensation for the designation of assembly units of existing plant to be retained in place, and shown on the construction sheets.

Section 4. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment (RUS Form 217e—Outside Plant Staking Services).

Attachment—RUS Form 217f

*Outside Plant Contract Document Phase Engineering Services*

Section 1. Review of Requirements. The Engineer shall use the Loan Design and other information furnished by the Owner under this Agreement as the basis for the preparation of the plans and specifications. Prior to the beginning of the preparation of the plans and specifications, the Engineer shall review with the Owner all data furnished to determine the most recent requirements for facilities to be included in the plans and specifications.

Section 2. Map Tracings and Other Data. Prior to and during the preparation of the plans and specifications by the Engineer, the Owner, if it has not previously done so by other provisions of this Agreement, shall furnish any of the following items needed by the Engineer:

A. Up-to-date tracings of the detail and town maps of the area of the proposed system on which the Loan Design was based and which show the existing system, and a tracing of the key map when a key map is required by the Owner;

B. Up-to-date cable schematics (cable plant layout), and construction sheets showing the existing system construction;

C. Up-to-date line and station data on existing subscribers;

D. The Loan Design and Borrower's Environmental Report on which the loan was based;

E. Current information as to the location and extent of electric and other lines available for joint use, together with conformed copies of all existing joint use or joint occupancy agreements covering such lines;

F. Current listing of existing, signed, and potential subscribers by map location and grade of service to be considered in the preparation of the plans and specifications. The list of existing subscribers shall be properly referenced to the line and station data;

G. Detailed lists of materials on hand, or on order, which are to be furnished by the Owner in the construction of the Project, together with the quantity and value of each item of such materials; and

H. A written statement setting forth the scope of plans and specifications and the sequence in which the construction shall be performed and whether service entrances are to be included in the plans and specifications.

The map tracings, schematics, and construction sheets are to be of suitable material capable of allowing corrections to be made of the information shown thereon and capable of being reproduced.

Section 3. Schematics, Assignments, and Cut Sheets

A. Cable Schematics. The Engineer shall prepare cable schematics in such form as the Owner shall require to: (a) serve as a means by which directions are given for connecting feeder cable and distribution cable pairs, cross-connection terminals, connecting load coils, and such other directions as may be necessary for properly splicing the feeder cables, distribution cables and other facilities being installed; (b) serve as the permanent circuit assignment record of the Owner's cable and wire facilities; and (c) adequately identify the physical location of all equipment, devices and connections other than services, associated with the pairs of such feeder cable and distribution cable facilities.

B. Circuit and Number Assignments. If requested by the Owner, the Engineer shall prepare telephone number assignments and shall identify the circuit to which the service is to be connected for station installations, including without limitation such information with respect to central office equipment connections as may be required.

C. Cut Sheets. Where modification of existing lines is to be performed, the Engineer shall furnish in such form as the Owner shall require complete and detailed information, collectively known as ''Cut Sheets'' for: (a) Making such changes in circuit connections in the existing outside plant as may be required, including without limitation all associated devices such as load coils, terminals, and temporary connections; (b) making such changes in telephone number assignments and service connections as may be required, including without limitations, the corresponding connection changes required at the central office end; and (c) designating the sequence to be followed in making such changes.

Section 4. Outside Plant Plans and Specifications and Contracts

A. Plans and Specifications. The Engineer shall, to the extent not previously prepared under other provisions of this Agreement, prepare and review with the Owner complete and detailed plans and specifications, drawings, maps and other documents required for the construction of the outside plant facilities to be included as a part of the Project. During the preparation of the plans and specifications, the Engineer shall make such changes in the plans and specifications as may be reasonably required by the Owner as a condition of approval by the Owner and Administrator.

B. Content of Plans and Specifications. The plans and specifications for outside plant shall be prepared in sufficient time to allow normal completion of construction of the outside plant to coincide with the established service dates and shall include the following:

1. One copy of the key map of the system, when a tracing is furnished by the Owner.

2. One copy (or more if necessary for clarity) of the central office area detail maps (sometimes referred to as exchange detail maps) and town maps of the system, on which there shall be indicated the following:

a. Location of lines to be constructed, indicating joint use or joint occupancy lines;

b. Location of switching centers and pair-gain devices;

c. Location of existing lines included as part of the proposed system and modification of such lines;

d. Location of existing lines to be retired;

e. Locations other than service entrances, where right-of-way has not been obtained;

f. Work Sectors indicating sequence of construction;

3. Complete drawings of each type of non-standard RUS unit covering the construction and the materials to be used.

4. An estimate of quantities of the various units of construction.

5. A complete cable plant layout and cable schematics, when applicable, for each central office area as prepared pursuant to paragraph A of section 3.

6. If the Project contains requirements for installation of underground conduit, manholes and associated appurtenances, the Engineer, during the preparation of the plans and specifications, shall secure field data necessary for the proper design of such facilities (including plan and profile data, if required, and detail construction drawings, including cable to be installed), and shall proceed with the preparation of detailed plans and specifications for the construction of such facilities. Such drawings and specifications, when completed, shall be added to, and made a part of, the construction plans and specifications.

7. An itemized list of materials on hand or on order to be furnished by the Owner, showing the locations of delivery points and delivery schedules of such materials, the quantity, unit price and extended price.

8. The form of the contract to be entered into between a Contractor and the Owner for the construction of the outside plant, including forms of notice and instructions to bidders, Contractor's proposal, materials and construction specifications, Contractor's bond, description of assembly units and construction drawings.

Note: Plans and specifications for outside plant facilities to be constructed under a force account proposal do not require Items 7 and 8, above.

C. Contracts

1. Upon receipt of notice by the Engineer from the Owner of the Administrator's approval of the plans and specifications, the Engineer shall, unless otherwise instructed by the Owner, with the approval of the Administrator, proceed to take all usual and customary actions, including compliance with the procedures set forth herein and in 7 CFR Part 1753, to facilitate full, free, and competitive bidding for the award of contracts.

2. Notices to Bidders shall be sent in accordance with Subpart F of 7 CFR Part 1753. The Engineer shall then review with the Owner and the Owner shall approve the qualifications of bidders who replied to the notice, as a condition of release of bid documents to any such bidder. The Engineer shall prepare and furnish to such qualified bidders the appropriate bid documents including construction sheets, and the plans and specifications upon the conditions provided in the applicable standard RUS contract forms. The construction sheets shall be furnished upon payment of reasonable charges. The Engineer shall also prepare and furnish, upon payment of reasonable charges, to material suppliers requesting them, copies of the Contractor's proposal sheets for outside plant together with any special drawings or material specifications pertaining thereto and a list of materials to be furnished by the Owner.

3. The Engineer shall conduct a Pre-Bid Conference in accordance with Subpart F of 7 CFR Part 1753 and shall be available to each prospective bidder for consultation with respect to the details of the plans and specifications and all other matters pertaining to the preparation of the proposals for the construction, or the supply of materials and equipment or services therefor. All changes to or clarifications of the plans and specifications provided to one prospective bidder shall be provided in writing to all other prospective bidders and to the Owner.

4. The Engineer shall attend and supervise all openings of bids for the construction, or for the furnishing of materials and equipment or services therefor. The Owner shall return unopened bids received from Bidders not previously qualified under paragraph C2 of this section. In the event that bids are received from less than three (3) qualified bidders, the bids shall remain unopened and the Owner shall notify the Administrator thereof immediately. If directed by the Owner, the Engineer shall proceed in respect of the rebidding, in the manner provided for herein for the initial bidding. The Engineer shall check the assembly unit prices and

summarize of all bids received. The Engineer shall render to the Owner assistance in connection with the Owner's consideration of the bids received so that contracts may be prudently and properly awarded. The Engineer shall submit to the Owner a written recommendation for award of the contract or rejection of all bids stating the reasons therefor.

5. The Engineer shall prepare and furnish to the Owner three (3) copies of the detailed proposal sheets or a detailed tabulation of the low bid, and a tabulation showing the names and totals of all bids. The Owner shall submit to the Administrator the bidding information for approval by the Administrator of the award of the contract. Upon receipt of notice from the Owner of the Administrator's approval of the award of the contract, the Engineer shall prepare three (3) counterparts of the construction contract to be executed by the Owner and the successful bidder and the Owner shall forward such executed counterparts to the Administrator for approval.

6. If, after the construction contract has been approved by the Owner and the Administrator, it shall be determined by the Owner that any changes in the plans and specifications are advisable, the Engineer shall prepare and submit a contract amendment in accordance with 7 CFR Part 1753.

D. Force Account

1. If all or a portion of the Project, shall be constructed by force account, the Engineer shall prepare a force account proposal in accordance with Subpart G of 7 CFR Part 1753.

a. When requested by the Owner, the Engineer shall prepare an itemized list of the total quantities of all items of materials required for the construction showing in addition the quantity of each item of materials the Owner has on hand based on the list furnished by the Owner pursuant to paragraph G of section 2.

b. The force account proposal shall include an estimate, prepared in collaboration with the Owner, of the unit construction costs in substantially the same form as the Contractor's proposal in the standard contract form, and a summary of the total estimated cost of construction, setting forth the following:

(1) The total Cost of labor and other;

(2) The total Cost of materials; and

(3) The number of calendar days required for the construction.

2. After receipt of notice by the Engineer from the Owner of approval by the Administrator of the force account proposal, the Engineer, in collaboration with the Owner, shall fix a date for the commencement of construction. In the determination of this date, consideration shall be given to the status of material deliveries, Staking, easements, and the availability of competent construction personnel and adequate equipment to facilitate continuous construction in an efficient and expeditious manner. Such date as agreed upon shall be submitted to the Administrator by the Owner and the date thus established shall be the ''Commencement Date'' for the construction. The Engineer shall be available to the Owner for consultation with respect to the details of the plans and specifications and all other matters pertaining to the construction of the Project.

3. If, after the force account proposal has been approved by the Owner and the Administrator, it shall be determined by the Owner that any change or changes in the force account proposal are advisable, the Engineer shall prepare and submit to the Owner all necessary details in connection with the change or changes, and upon approval thereof by the Owner, the proposed change or changes shall be submitted by the Owner to the Administrator. To the extent that the Administrator approves such proposed change or changes they shall be included as part of the force account proposal, and the Engineer shall immediately proceed in respect of any additional Staking, construction, and material contracts or amendments required thereby in like manner as though such Staking, construction, and material contracts or amendments were originally included as part of the force account proposal.

Section 5. Compensation

A. The Owner shall pay the Engineer for services performed pursuant to this RUS Form 217f (except as provided in paragraph B of this section) as follows:

1. The sum of _____ dollars ($_____) or when the outside plant is divided into sections for construction purposes requiring separate plans and specifications for each section; a sum of _____ dollars ($_____) for each such section for which complete plans and specifications are prepared; plus,

2. The sum of _____ dollars ($_____) for each approved amendment to the contract; plus

3. The sum of _____ dollars ($_____) per mile for each mile of Project line facilities (1) included in the plans and specifications, and (2) added or deleted by approved amendments to the plans and specifications; plus

4. The sum of _____ dollars ($_____) for each approved force account proposal.

The compensation payable under paragraph A of this section shall be due and payable ten (10) days after the approval of the plans and specifications or approved amendments by the Owner and the Administrator.

B. The Owner shall pay the Engineer ''time and expense'' compensation as defined in the current Table 2 of this Agreement for services: (1) As requested by the Owner, in connection with corrections to, or the furnishing of, items required to be furnished by the Owner per section 2; (2) required under section 3; (3) in connection with underground conduits, paragraph B6 of section 4; (4) for changes in force account plans and specifications, paragraph D3 of section 4; and (5) in connection with the conducting of the Pre-Bid Conference, paragraph C3 of section 4, and for rebidding, paragraph C4 of section 4.

Section 6. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment (RUS Form 217f—Outside Plant Plans and Specifications and Contracts).

Attachment—RUS Form 217g

*Outside Plant Construction Phase Engineering Services*

Section 1. Construction Phase

A. General. As engineering representative of the Owner, and in accordance with sound and accepted engineering practices, the Engineer: (1) Shall provide Construction Administration and Inspection services; (2) shall assist the Owner in obtaining the expeditious and economical construction of the Project in accordance with the approved plans and specifications, the terms of the construction contract or force account proposal, and 7 CFR Part 1753; and (3) shall have and exercise sole responsibility for the issuance of supplemental directives to the Contractor regarding the Contractor's performance in accordance with the terms of the construction contract as approved by the Owner and the Administrator. The Engineer's undertaking hereunder shall not relieve the Contractor of the Contractor's obligation to perform the work in conformity with the plans and specifications and in a workmanlike manner and shall not impose upon the Engineer any obligation to see that the work is performed in a safe manner. The Engineer shall not be responsible for the failure of the Contractor to perform the work in accordance with the contract or to perform the work in a safe workmanlike manner. In fulfilling the above responsibility, the Engineer shall as necessary:

1. Interpret the plans and specifications and convey such interpretation to the Contractor;

2. Inspect the progress of and quality of construction, in sufficient detail to provide reasonable assurance to the Owner of the adequacy of such progress and quality of construction, pursuant to the requirements of the plans and specifications and contract;

3. Confirm the acceptability of materials and equipment proposed by the Contractor to be utilized in the construction prior to the use of such materials or equipment on the Project and promptly reject materials and equipment not in compliance with the plans and specifications; and

4. Inspect the manner of incorporation of the materials and equipment into the Project, and the workmanship with which such materials and equipment are incorporated and reject materials, equipment and workmanship which the Engineer determines will not be in compliance with the plans and specifications. Such Inspection shall be deemed to be adequate if a reasonable percentage of all routine construction units (other than units requiring detailed inspection) are observed at the time of installation and found free of error.

The above enumeration of specific requirements shall not limit the general undertakings of the Engineer to perform services set forth in the first sentence of paragraph A of this section. The obligations of the Engineer hereunder are for the benefit of only the Owner and the Administrator, and shall not relieve the Contractor of any of its own responsibilities under its contract with the Owner.

B. Residents and Inspectors

1. A Resident with full authority to act for the Engineer shall be maintained by the Engineer at the site of the Project at all times during the entire period of scheduled construction (including times when the Resident is available and through no fault of the Engineer scheduled construction is not performed, and including times when corrective work is being performed) unless specifically directed otherwise by the Owner with the approval of the Administrator. A Resident shall be necessary for each outside plant construction contract.

2. If, at any time during construction, a Resident, or Inspector, is not required at the Project site, or such personnel are not available because of other responsibilities on the Project, the Engineer shall assign a Resident and/or Inspector on an intermittent basis, to effect necessary observations of construction during any critical phase of such construction.

3. If the Engineer determines that particular components of the work or particular circumstances during construction require the presence of a specialized representative of the Engineer, such as an architect, structural engineer, design engineer or other specialist for the purpose of interpreting contract requirements, or performing special inspections or tests to facilitate compliance by the Contractor with the plans and specifications and terms of the construction contract, the Engineer with prior approval of the Owner shall assign such personnel to the Project site.

4. The Engineer shall maintain at the site of the Project and under the direct supervision of the Resident a sufficient number of qualified Inspectors, to fully discharge the responsibility of the Engineer pursuant to paragraph A of this section (including times when such assigned Inspectors are available and through no fault of the Engineer scheduled construction is not performed). The number of Inspectors so required will vary with the size of the Project, the number of construction crews, and the speed of construction.

5. The number of Residents and Inspectors required by the Engineer for a routine construction schedule for this Project to effect completion within the allowed number of scheduled ''working days'' is as follows:

a. _____ (_____) Resident(s);

b. _____ (_____) Inspectors(s);

6. In the event conditions should arise, through no fault of and beyond control of the Engineer, which would require the placement by the Engineer of additional Inspectors (or Residents) on the Project, to accommodate special needs of the Owner (or Contractor, with approval of the Owner), then, with the approval of the Owner prior to their assignment to the Project, the Engineer shall assign such additional qualified personnel to the Project for the limited time of such requirements.

C. Pre-Construction Conference. A competent representative from the office of the Engineer, and the Resident (or Residents) to be assigned to the Project, shall conduct the outside plant pre-construction conference. The detailed notes taken by the Engineer on items discussed shall be furnished to all parties. Such notes shall be used by the Resident, as applicable, in interpreting the plans and specifications pursuant to paragraph A1 of this section.

D. Project Office. The Engineer shall establish and maintain a field office, with telephone service, in the proximity of the Project when construction is in progress and shall notify the Owner of the address and telephone number of such field office. Any notices, instructions or communications delivered to such field office shall be deemed to have been delivered to the Engineer.

E. Defective Construction. If the construction is by contract, the Engineer shall notify the Contractor in writing of all observed or otherwise determined defects in workmanship or materials in accordance with the terms of the construction contract. If the construction is by force account, the Engineer shall advise the Owner relative to the correction of such defects.

F. Joint Use or Joint Occupancy. In connection with all joint use or joint occupancy construction, the Engineer shall:

1. Coordinate construction activities for the Owner with the designated representative of other parties to joint use or joint occupancy agreements;

2. Review for the Owner all changes proposed by other parties to joint use or joint occupancy agreements for changes in and additions to their existing pole lines under such agreements and submit to the Owner recommendations thereon.

G. Tests. The Engineer shall conduct, or cause to be conducted, such tests of circuits and equipment as required by the Owner and the Administrator to determine compliance with the performance requirements of the plans and specifications. The Engineer shall make recommendations in writing for the correction of defective materials, workmanship, or equipment. All cases of transmission or operational difficulties due to faulty construction or defective materials or equipment in the Project shall be reported in writing to the Contractor for correction if the construction is by contract or to the Owner if construction is by force account. When the corrections have been made, the circuits and equipment shall again be tested. The Engineer shall furnish test equipment as required for performing all required tests or measurements.

The outside plant tests to be made on this Project are noted in the table below:

| Description of Test or Measurements | Test or Measurements | | Will perform or participate in performing tests | |
|---|---|---|---|---|
| | Subscriber Loop Plant | Trunk Plant | Owner | Engineer |
| C.O. Ground Measurement | ..... | ..... | ..... | X |
| Copper Shield or Shield/Armor Continuity | X | X | ..... | X |
| Conductor Continuity | X | X | ..... | X |
| Shield or Armor Ground Resistance | X | X | ..... | X |
| Conductor Insulation Resistance | X | X | ..... | X |
| DC Loop Resistance | ..... | ..... | ..... | ..... |
| DC Loop Resistance Unbalance | ..... | ..... | ..... | ..... |
| VF Insertion Loss | ..... | ..... | ..... | ..... |
| Loop Measurements (Loop Checking) | ..... | ..... | ..... | ..... |
| Two-Person Structural Return Loss | ..... | ..... | ..... | ..... |
| One-Person Open Circuit Measurements | ..... | ..... | ..... | ..... |
| Cable Insertion Loss at Carrier Frequency | ..... | ..... | ..... | ..... |
| Fiber Armor Continuity | X | X | ..... | X |
| Fiber Optic Splice Loss—Field | X | X | ..... | X |
| Fiber Optic Splice Loss—C. O. | X | X | ..... | X |
| End-to End Attenuation | X | X | ..... | X |
| End-to End Fiber Signature | X | X | ..... | ..... |

As appropriate, complete the table using these symbols:
X—These are standard tests and measurements required on facilities as desired by the owner or required by the Administrator.
*—These tests will not be required if the distribution pairs are not cross-connected to feeder pairs at the time of acceptance testing.
N/A—Not Applicable.

H. Connecting Companies. The Engineer shall coordinate all engineering and construction activities with connecting companies and shall notify the Owner when the Project, or a section thereof, shall be ready to be placed in service. After giving

such notice, the Engineer shall, when directed to do so by the Owner, cause the Project, or such section thereof as may be ready, to be placed in service.

I. Reporting. The Engineers shall prepare, execute and submit to the Owner _____ (insert frequency of reporting—minimal monthly) all estimates, certificates, reports, and other documents required to be executed by the Engineer pursuant to a construction contract, a force account proposal, or the 7 CFR Part 1753. The Engineer shall review and, if satisfactory, recommend for approval each periodic estimate submitted by contractors prior to approval and payment by the Owner. Such recommendations shall include a statement by the Engineer based on the Engineer's Inspection of executed work and the progress of the work and subject to evaluation and testing of the work as a completed Project, that all construction for which payment is requested has been completed and cleaned up in accordance with the terms of the construction contract and that all defective construction of which the Contractor shall have received fifteen (15) or more days written notice, has been corrected.

The Engineer shall maintain a cumulative inventory of all units of construction incorporated in the Project, showing unit prices and extended totals, for all such units of construction. When it appears that the previously approved contract total is likely to be exceeded, the Engineer shall immediately notify the Owner in a format suitable for notifying the Administrator. When requested by the Owner or when the ''Overrun'' results in 20% above the contract total, the Engineer shall prepare a contract amendment in accordance with 7 CFR Part 1753 for execution by the Parties to the construction contract, to cover the additions or changes in construction units that are resulting in such ''Overrun''.

J. Final Inspection. The Owner and a representative of the Administrator will normally conduct a final inspection of completed construction. When requested by the Owner, a qualified representative of the Engineer shall be present.

Section 2. Final Documents

A. Contract Construction. If the Project or any portion thereof shall be constructed pursuant to a construction contract, the Engineer shall prepare and submit to the Owner complete and detailed final documents as specified in 7 CFR 1753 and a statement of all amounts payable by the Owner under the construction contract. The final documents shall be in a format suitable for approval by the Owner and subsequent submission to the Administrator for approval. These final documents shall be submitted to the Owner within forty-five (45) calendar days after the completion of construction based on the date shown on the certificate of completion covered by each contract.

B. Force Account Construction. If the Project or any portion thereof shall be constructed by force account:

1. Within thirty (30) calendar days after completion of construction of the Project, the Owner shall furnish to the Engineer the following data:

a. The cost of all materials used in construction of the Project;

b. Cost of right-of-way clearing (direct labor costs);

c. All direct labor costs chargeable to construction exclusive of the right-of-way clearing; and

d. A list of all items of overhead cost applicable to the construction of the Project, but excluding the cost of engineering, legal, accounting and other professional services, interest during construction and preliminary survey charges.

2. Within forty-five (45) calendar days after the completion of construction of the Project, the engineer shall prepare and submit to the Owner for approval complete and detailed final documents in such form as the Administrator may prescribe, including without limitation, a final inventory of construction and a final inventory of retirements. The final documents shall contain the labor and material unit costs based on data supplied by the Owner.

C. Number of Copies. Copies of final documents shall be furnished in accordance with 7 CFR Part 1753.

Section 3. Plant Records

A. Prior to Cutover. If the Owner shall have notified the Engineer not later than ten (10) days prior to of the start of construction in a central office area that the Owner elects to assign to the Engineer the preparation of any of the following plant records, the Engineer shall prepare and deliver these records to the Owner, not later than fifteen (15) calendar days prior to the start of Cutover of each central office area included as a part of the Project. These records cover the Cutover work on facilities completed as of the date of delivery of such records for each such area. The following records shall be in such form as the Owner, with the approval of the Administrator, may prescribe:

1. Cable schematics, corrected to show ''as constructed'' conditions of that portion of the Project as of such date;

2. Cable records data, for completed line segments as of such date;

3. Line and station data for completed line segments as of such date; and

4. Terminal assignment records.

B. After Cutover. The Engineer shall deliver to the Owner, within thirty (30) calendar days after Cutover of facilities in any completed exchange area or completed section of the Project, the record drawings of the following plant records covering such Project area (excluding any of such records that the Owner has previously elected to prepare with its own forces):

1. Cable schematics, corrected to show ''as constructed'' conditions of such Project area;

2. Cable record data, for all construction completed in such Project area;

3. Line and station records for all lines completed in such Project area as a part of the Project;

4. Final maps, showing record drawings facilities completed in such Project area; and

5. Final complete and detailed construction sheets, showing facilities completed in such Project area, including the designation of assembly units of existing plant retained in place along existing plant lines segments on which modification work was performed as a part of the Project.

Section 4. Inventory and Appraisal. When requested by the Owner, the Engineer shall prepare within thirty (30) calendar days after completion of construction of the Project and submit to the Owner an inventory and appraisal of all existing telephone plant retained as part of the Owner's system. The inventory and appraisal shall be in such form and provide such data as the Owner, with the approval of the Administrator, may prescribe.

Section 5. Compensation

A. For Services Under sections 1, 3 and 4. The Owner shall pay the Engineer ''time and expense'' compensation, as defined and detailed in current Table 2 of this Agreement for all services performed under sections 1, 3 and 4. Compensation under this section shall not exceed _____ dollars ($_____) unless said amount has been increased by a contract amendment approved by the Owner and the Administrator. Appropriate documentation justifying the increase shall accompany the contract amendment.

Compensation under paragraph A of this section shall be due and payable as follows:

1. Ninety-five Percent (95%) thereof shall be due and payable ten (10) days after delivery each month of the invoice of the Engineer;

2. The balance of such compensation shall be due and payable ten (10) days after delivery of a statement by the Engineer to the Owner certifying that all final documents prepared by the Engineer, for execution by the Contractor, have been mailed or delivered to the Contractor for execution.

B. For Services Under section 2. The Owner shall pay the Engineer for all services performed under section 2 as follows:

1. The sum of _____ dollars ($_____) for each service entrance to be installed, replaced or modified during the construction of the Project; plus

2. The sum of _____ dollars ($_____); or when the Project is divided into sections for which separate outside plant plans and specifications are prepared, the sum of _____ dollars ($_____) for each section requiring final documents; plus the sum of _____ dollars ($_____) for each mile of Project line facilities included in the final documents. Ninety-five (95%) percent of the compensation under this paragraph shall be due and payable ten (10) days after approval by the Owner and the Administrator of the respective final documents and the balance of the compensation under this paragraph shall be due and payable ten (10) days after completion of the Project as defined in the Table 1.

C. Bi-weekly Statement. For compensation covered by paragraph A this section, the Engineer shall submit to the Owner a biweekly statement showing the names of the Residents and Inspectors, and the actual time spent on the Project by each Resident and each Inspector during the preceding period. The statement should be prepared and submitted to the Owner in a format similar to that shown in RUS Form 217, Exhibit A.

Section 6. Section Reference. Unless otherwise specified or indicated, any reference to ''section'' shall mean within this attachment RUS Form 217g—Outside Plant

Construction-Project Direction, Inspection, Testing and Contract Closeout.

[End of clause]

Dated: February 10, 1997.

Jill Long Thompson,

*Under Secretary, Rural Development.*

[FR Doc. 97–3921 Filed 2–14–97; 8:45 am]

**BILLING CODE 3410–15–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–CE–48–AD; Amendment 39–9935; AD 97–04–11]**

**RIN 2120–AA64**

## Airworthiness Directives; Air Tractor, Inc. Models AT–802 and AT–802A Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Air Tractor, Inc. (Air Tractor) Models AT–802 and AT–802A airplanes. This action requires revising the Airworthiness Limitations section of the applicable maintenance manual to change the life limit of the tail landing gear spring. This action results from analysis of the life limits of both the tail landing gear and main landing gear after a fatigue failure of the main landing gear on one of the affected airplanes. This analysis revealed that the life limit of the tail landing gear spring should be 3,000 hours time-in-service (TIS) instead of 3,500 hours TIS to be consistent with the main landing gear spring. The actions specified by this AD are intended to prevent fatigue failure of a tail landing gear spring before the life limit of the part is achieved, which could result in loss of control of the airplane.

**EFFECTIVE DATE:** April 4, 1997.

**ADDRESSES:** Service information that applies to this AD may be obtained from Air Tractor Inc., P. O. Box 485, Olney, Texas 76374; telephone (817) 564–5616; facsimile (817) 564–2348. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–48–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Bob May, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

**SUPPLEMENTARY INFORMATION:**

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Air Tractor Models AT–802 and AT–802A airplanes was published in the Federal Register as a notice of proposed rulemaking (NPRM) on October 18, 1996 (61 FR 54370). The action proposed to require revising the Airworthiness Limitations section of the applicable maintenance manual to change the life limit of the tail landing gear spring. The proposed action as specified in the NPRM would be accomplished by incorporating the revision (dated May 24, 1996) to Section 6, Airworthiness Limitations, of the Air Tractor AT 802/802A Maintenance Manual.

The NPRM resulted from analysis of the life limits of both the tail landing gear and main landing gear after a fatigue failure of the main landing gear on one of the affected airplanes. This analysis revealed that the life limit of the tail landing gear spring should be 3,000 hours time-in-service (TIS) instead of 3,500 hours TIS to be consistent with the main landing gear spring.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 37 airplanes in the U.S. registry will be affected by this AD. An owner/operator of one of the affected airplanes holding at least a private pilot certificate is allowed to incorporate the manual revision as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7). However, the change in the life limit would require owners/operators of the affected airplanes to have the tail landing gear spring replaced every 3,000 hours TIS instead of every 3,500 hours TIS. The owners/operators of the affected airplanes will be required to have this part replaced 500 hours TIS sooner than already required. The FAA has no way of determining the total hours TIS each owner/operator would accumulate over the life of the affected airplanes and, therefore, cannot calculate the number of additional tail landing gear springs each owner/operator would need to have replaced.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–04–11 Air Tractor, Inc.: Amendment 39–9935; Docket No. 96–CE–48–AD.

*Applicability:* Models AT–802 and AT–802A airplanes (serial numbers 0001 through 0038), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent fatigue failure of a tail landing gear spring before the life limit of the part is achieved, which could result in loss of control of the airplane, accomplish the following:

(a) Incorporate the revision (dated May 24, 1996) to Section 6, Airworthiness Limitations, of the Air Tractor AT 802/802A Maintenance Manual.

(b) Incorporating the maintenance manual revision as required by paragraph (a) of this AD may be performed by the airplane owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(e) All persons affected by this directive may obtain copies of the maintenance manual revision referred to herein upon request to Air Tractor Inc., P. O. Box 485, Olney, Texas 76374; or may examine this information at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment (39–9935) becomes effective on April 4, 1997.

Issued in Kansas City, Missouri, on February 10, 1997.

Henry A. Armstrong,

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–3839 Filed 2–14–97; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF THE TREASURY

## Office of the Under Secretary for Domestic Finance

## 17 CFR Part 404

## Government Securities Act Regulations: Recordkeeping

**AGENCY:** Office of the Under Secretary for Domestic Finance, Treasury.

**ACTION:** Final Rule.

**SUMMARY:** The Department of the Treasury (''Department'') is issuing in final form an amendment to the recordkeeping rules in § 404.4 of the regulations issued under the Government Securities Act of 1986 (''GSA''). 17 CFR 404.4 of the GSA regulations requires financial institutions that are government securities brokers or dealers to make and preserve records. Specifically, the Department is amending § 404.4(a)(1) to clarify the applicability of the federal bank regulatory agencies' rules, as adopted by the GSA rules, to financial institutions and to conform with current recordkeeping rule revisions being undertaken by the federal bank regulatory agencies.

**EFFECTIVE DATE:** This amendment is effective April 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Kerry Lanham or Kurt Eidemiller, Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, at (202) 219–3632.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Government Securities Act of 1986 (''GSA''), as amended [1] requires, among other things, that a financial institution that is a government securities broker or dealer notify its appropriate regulatory agency (''ARA'') of its status as such, thereby providing for the regulation of its government securities business.[2] In 1987, when the Department developed the GSA regulations affecting financial institutions that are required to file notice as government securities brokers or dealers (''bank broker-dealers''), it decided to adopt the existing recordkeeping regulations of the federal bank regulatory agencies.[3] These rules are similar to the Securities and Exchange Commission's recordkeeping requirements in Rule 17a–3.[4]

The reason for relying on existing bank regulations was that those financial institutions effecting government securities broker-dealer transactions were already subject to a system of federal regulation and supervision, which explicitly included recordkeeping requirements relating to securities activities. Requiring those institutions to follow another set of recordkeeping requirements was viewed as unduly burdensome and did not promote the purposes of the GSA.[5]

Section 404.4 of the GSA regulations provides that, for bank broker-dealers, compliance with the recordkeeping rules of the bank ARAs, together with additional GSA recordkeeping provisions,[6] constitutes compliance with the GSA recordkeeping rules. However, the respective ARAs' regulations provide for certain exemptions from, or exceptions to, most of their recordkeeping rules based on a stated transaction threshold. Specifically, the ARAs' regulations exempt banks from most of the respective recordkeeping requirements if the bank transacts a de minimis annual average number of transactions. The regulations state, with minor variations, the following: ''The requirements * * * shall not apply to banks having an average of less than 200 securities transactions per year for customers over the prior three calendar year period, exclusive of transactions in U.S. government and federal agency obligations.'' [7] The ARAs have interpreted this exemption as excluding government securities transactions, meaning that government securities transactions are not included in the

[1] 15 U.S.C. 78*o*–5.

[2] 15 U.S.C. 78*o*–5(a)(1)(B).

[3] See 12 CFR Part 12 for national banks, which are regulated by the Office of the Comptroller of the Currency (''OCC''); 12 CFR Part 208 for state member banks of the Federal Reserve System, which are regulated by the Board of Governors of the Federal Reserve System (''Board''); and 12 CFR Part 344 for state banks that are not members of the Federal Reserve System, which are regulated by the Federal Deposit Insurance Corporation (''FDIC'').

[4] 17 CFR 240.17a–3.

[5] 52 FR 5675 (February 25, 1987).

[6] In addition to complying with the recordkeeping rules of its ARA, a bank broker-dealer is required to maintain, among other things, records pertaining to securities positions (17 CFR 404.4(a)(3)(i)(A)).

[7] See 12 CFR 12.7(a); 12 CFR 208.8(k)(6)(i); and 12 CFR 344.7(a).

exempted, or de minimis, transaction count.

However, paragraph 404.4(a)(1) of the GSA regulations, in adopting the bank ARAs' recordkeeping rules for bank broker-dealers, contains the following provision: ''* * * *provided however,* that the records required to be made and kept by those regulations shall be made or kept without regard to the exemptions for transactions in U.S. government or Federal agency obligations provided in 12 CFR 12.7(a), 12 CFR 208.8(k)(6)(i), and 12 CFR 344.7(a).'' Since implementing the GSA regulations, the Department has consistently interpreted this provision to mean that a bank broker-dealer's government securities transactions are included in the 200 securities transaction exemption threshold that is provided by the ARA rules. This provision was intended to permit bank broker-dealers that conduct government securities transactions to take advantage of the de minimis exemption from the ARAs' recordkeeping rules that was available to them for their other securities business. Accordingly, the GSA regulations allow a bank broker-dealer to conduct up to 200 government securities transactions, or a combination of up to 200 government and other securities transactions, per year without having to comply with most of the bank ARAs' recordkeeping rules. It has been the Department's view that, for purposes of this part, a bank broker-dealer falling within these parameters is exempt from paragraph 404.4(a)(1) of the GSA recordkeeping rules.

As a result of the cross-referencing, there has been some confusion about the applicability of the ARAs' exemption threshold to bank broker-dealers' government securities transactions. The interrelationship between the recordkeeping language of the ARAs' rules and the GSA regulations often has been confusing and ambiguous. The ARAs and the Department are working together to eliminate this ambiguity and to provide for a clear, understandable and consistent interpretation of the rules.

The ARAs have proposed revisions to their recordkeeping rules that would conflict, in part, with the GSA recordkeeping requirements as they are presently stated in section 404.4(a).[8] This amendment to the GSA regulations will help to eliminate any ambiguity or confusion resulting from the interplay of the respective regulations. This final rule amendment is intended to be published within the same timeframe as those final rules that are being adopted by the Board and the OCC.

As stated by the OCC in the preamble section of their proposed rule revisions, ''Consistent with the GSA regulations, proposed § 12.1(c)(2)(ii) exempts a national bank that conducts fewer than 500 government securities brokerage transactions per year from complying with the recordkeeping requirements under proposed (and current) § 12.3 * * * This exemption does not apply to government securities dealer transactions by national banks, however.'' [9]

The Board has proposed a similar rule revision. As stated in the preamble section to its proposed rules, ''A new § 208.24(g)(2) would clarify that State member banks that effect up to 500 government securities brokerage transactions and are exempt from registration under Department of the Treasury regulation 401.3(a)(2)(i), 17 CFR 401.3(a)(2), also are exempt from § 208.24. This exemption would not be available if a bank has filed notice or is required to file notice indicating that it acts as a government securities broker or dealer.'' [10]

In the rule proposals, both agencies also stated that they had been advised by staff at the Bureau of the Public Debt, which is the organization within the Department of the Treasury that is responsible for administering the GSA regulations, that the staff was considering amending the GSA recordkeeping rules. The purpose would be to clarify any ambiguity with respect to the recordkeeping requirements for financial institutions that conduct government securities transactions resulting from the interplay of the GSA regulations with the ARA recordkeeping requirements.

The final rules being adopted by the OCC and the Board, which are virtually unchanged from the proposed rules, will increase the exemption threshold to 500 government securities brokerage transactions, which is consistent with the limited brokerage exemption provided by the GSA regulations in § 401.3 (17 CFR 401.3, Exemption for financial institutions that are engaged in limited government securities brokerage activities). The GSA limited brokerage exemption provision basically states that a financial institution is not regarded as acting as a government securities broker and is exempt from the requirement to file notice as a government securities broker and from most of the GSA regulations, including the recordkeeping requirements, if it effects fewer than 500 government securities brokerage transactions per year.[11]

However, the OCC's and the Board's final rules contain additional language that we view as contradictory to the intended applicability of 17 CFR 404.4(a) to bank dealers.[12] The final rules state that the de minimis exception does not apply to dealer transactions by national banks (OCC) [13] or noticed financial institution government securities brokers or dealers (Board).[14] As a result, entities engaging in government securities dealer transactions would be subject to the bank ARA recordkeeping rules regardless of how many transactions were conducted. As mentioned earlier, the Department views 17 CFR 404.4(a) as meaning that, for purposes of the GSA, bank broker-dealers are not required to follow most of the ARAs' recordkeeping rules if their annual government securities dealer transactions, or a combination of their government and other securities transactions, are less than 200. Given this difference in application of the GSA and ARAs' rules, section 404.4 of the GSA regulations is being amended to conform with the ARAs' rules and to make clear its intended applicability.

The Department is therefore amending paragraph 404.4(a)(1) of the GSA regulations (17 CFR 404.4, Records to be made and preserved by government securities brokers and dealers that are financial institutions) with respect to bank broker-dealers that are subject to bank regulatory agency recordkeeping rules by deleting the current provision, ''*provided however,* that the records required to be made and kept by those regulations shall be made or kept without regard to the exemptions for transactions in U.S. government or Federal agency obligations provided in 12 CFR 12.7(a), 12 CFR 208.8(k)(6)(i), and 12 CFR 344.7(a).'' As a result, in order to be in compliance with the GSA recordkeeping rules at 17 CFR 404.4(a)(1), all bank

[8] See 60 FR 66517 (December 22, 1995) for the OCC's proposed revisions and 60 FR 66759 (December 26, 1995) for the Board's proposed revisions. It is the Department's understanding that the FDIC also intends to address this same rule modification to ensure consistent application and interpretation of the rules. The FDIC published an Advance Notice of Proposed Rulemaking on this subject on May 24, 1996 (61 FR 26135).

[9] 60 FR 66518 (December 22, 1995).

[10] 60 FR 66760 (December 26, 1995).

[11] The GSA requirements of Part 450 (17 CFR Part 450) concerning custodial holdings of government securities for customers apply to all financial institutions.

[12] The OCC published its final rule on December 2, 1996. See 61 FR 63958 (December 2, 1996). The Board intends to publish its final rule in January 1997.

[13] 12 CFR 12.1(c)(2)(ii).

[14] 12 CFR 208.24(g)(2).

broker-dealers will be required to follow the ARAs' recordkeeping rules if even a single government securities dealer transaction is conducted.

II. Special Analyses

This final rule amendment does not meet the criteria for a ''significant regulatory action'' pursuant to Executive Order 12866. The Administrative Procedure Act (''APA'') (5 U.S.C. 553) generally requires that prior notice and opportunity for comment be afforded before the adoption of rules by federal agencies. Inasmuch as this final rule merely involves changes to conform with the rule revisions currently being adopted by the federal banking regulatory agencies, while not involving any substantive changes to the regulations, the notice and comment provisions of the APA are unnecessary pursuant to 5 U.S.C. 553(b)(B).

As no notice and public comment are required for this rulemaking, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et. seq.*), do not apply.

The Paperwork Reduction Act (44 U.S.C. 3504(h)) requires that collections of information be submitted to the Office of Management and Budget for review and approval. Since this rule revision does not include any new collection of information given the ARAs' current interpretation and application of their recordkeeping requirements, the Paperwork Reduction Act is inapplicable.

List of Subjects in 17 CFR Part 404

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 17 CFR Part 404 is amended as follows:

## PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

1. The authority citation for Part 404 continues to read as follows:

Authority: 15 U.S.C. 78*o*–5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

2. Section 404.4 is amended by revising paragraph (a)(1) to read as follows:

**§ 404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.**

(a) * * *

(1) Is subject to 12 CFR part 12 (relating to national banks), 12 CFR part 208 (relating to state member banks of the Federal Reserve System) or 12 CFR part 344 (relating to state banks that are not members of the Federal Reserve System), or is a United States branch or agency of a foreign bank and complies with 12 CFR part 12 (for federally licensed branches and agencies of foreign banks) or 12 CFR part 208 (for uninsured state-licensed branches and agencies of foreign banks) or 12 CFR part 344 (for insured state licensed branches and agencies of foreign banks);

* * * * *

Dated: January 16, 1997.

John D. Hawke, Jr.,

*Under Secretary for Domestic Finance.*

[FR Doc. 97–3834 Filed 2–14–97; 8:45 am]

BILLING CODE 4810–39–W

## Internal Revenue Service

## 26 CFR Part 1

**[TD 8708]**

**RIN 1545–AL98**

## Computation of Foreign Taxes Deemed Paid Under Section 902 Pursuant to a Pooling Mechanism for Undistributed Earnings and Foreign Taxes; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains a correction to final income tax regulations which were published in the Federal Register on Tuesday, January 7, 1997 (62 FR 923) relating to the computation of foreign taxes deemed paid under section 902.

**EFFECTIVE DATE:** January 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Caren S. Shein, (202) 622–3850 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

Background

The final regulations that are the subject of this correction are under section 902 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8708), which are the subject of FR Doc. 97–153, is corrected as follows:

**§ 1.902–3 [Corrected]**

On page 940, column 3, § 1.902–3(l), the sixth line from the bottom of the paragraph, the language ''See § 1.902–1(a)(13)(iii). For'' is corrected to read ''See § 1.902–1 (a)(13)(i). For''.

Michael L. Slaughter,

*Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 97–3812 Filed 2–14–97; 8:45 am]

BILLING CODE 4830–01–U

## 26 CFR Part 1

**[TD 8701]**

**RIN 1545–AC06**

## Treatment of Shareholders of Certain Passive Foreign Investment Companies; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains a correction to final regulations (TD 8701) which were published in the Federal Register on Friday, December 27, 1996 (61 FR 68149). The final regulations provide rules for making a deemed sale or deemed dividend election to purge a shareholder's holding period of stock of a PFIC of those taxable years during which the PFIC was not a QEF.

**EFFECTIVE DATE:** December 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Gayle Novig (202) 622–3880 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

Background

The final regulations that are subject to this correction is under section 1291 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8701) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of final and temporary regulations (TD 8701) which is the subject of FR Doc. 96–32246 is corrected as follows:

**§ 1.1291–9 [Corrected]**

On page 68152, column 3, § 1.1291–9, paragraph (d)(2)(i), line 9, the language ''taxable year of inclusion of each'' is corrected to read ''taxable year or years of inclusion of each''.

Michael L. Slaughter,

*Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 97–3950 Filed 2–14–97; 8:45 am]

BILLING CODE 4830–01–U

**26 CFR Part 20**

**[TD 8714]**

**RIN 1545–AU81**

## Estate and Gift Tax Marital Deduction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations amending the final estate tax marital deduction regulations. The amendments are made to conform the estate tax regulations to recent court decisions. The amendments affect estates of decedents electing the marital deduction for qualified terminable interest property (QTIP) and the estates of the surviving spouses of such decedents. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

**DATES:** These regulations are effective February 18, 1997.

For dates of applicability of these regulations, see Effective Date under **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hurwitz at (202) 622–3090 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

Background

On March 1, 1994, the IRS published final Estate and Gift Tax Regulations (26 CFR part 20 and part 25) under sections 2044, 2056, 2207A, 2519, 2523, and 6019 of the Internal Revenue Code (Code) in the Federal Register (59 FR 9642). At the time the regulations were published, the position contained in § 20.2056(b)–7(d)(3) was the subject of litigation in a number of cases and had been rejected by two circuit courts in *Estate of Clayton* v. *Commissioner,* 976 F.2d 1486 (5th Cir. 1992), *rev'g* 97 T.C. 327 (1991), and *Estate of Robertson* v. *Commissioner,* 15 F.3d 779 (8th Cir. 1994), *rev'g* 98 T.C. 678 (1992). Since that time, *Estate of Spencer* v. *Commissioner,* 43 F.3d 226 (6th Cir. 1995), *rev'g* T.C. Memo.l 1992–579, also rejecting the IRS position, has been decided. Additionally, in *Estate of Clack* v. *Commissioner,* 106 T.C. 131 (1996), the Tax Court reversed the position it had taken previously in *Estate of Clayton, Estate of Robertson,* and *Estate of Spencer.* This temporary regulation amends the final regulations in accordance with the circuit courts' decisions in *Estate of Clayton, Estate of Robertson,* and *Estate of Spencer,* and the Tax Court's decision in *Estate of Clack.*

Explanation of Provisions

Section 20.2056(b)–7T(d)(3)(ii) has been added. As a result of the addition, an income interest (or life estate) that is contingent upon the executor's election under section 2056(b)(7)(B)(v) will not be precluded, on that basis, from qualification as a ''qualifying income interest for life'' within the meaning of section 2056(b)(7)(B)(ii).

In accordance with the addition of § 20.2056(b)–7T(d)(3)(ii), § 20.2056(b)–7T(h) *Example 6*(ii) and § 20.2044–1T *Example 8* are added.

Effective Date

These regulations are effective in the case of qualified terminable interest property elections made after February 18, 1997.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Susan B. Hurwitz, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 20 is amended as follows:

## PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 20.2044–1T is added to read as follows:

**§ 20.2044–1T Certain property for which marital deduction was previously allowed (temporary).**

(a) through (d). [Reserved]. For further guidance, see § 20.2044–1 (a) through (d).

(e) *Examples.* [Reserved]. For further guidance, see § 20.2044–1(e).

*Example 1* through *Example 7.* [Reserved]. For further guidance, see § 20.2044–1(e) *Example 1* through *Example 7.*

*Example 8. Inclusion of trust property when surviving spouse dies before first decedent's estate tax return is filed.* D dies on July 1, 1997. D's estate tax return is due after February 18, 1997. Under the terms of D's will, a trust is established for the benefit of D's spouse, S. The will provides that S is entitled to receive the income from that portion of the trust that the executor elects to treat as qualified terminable interest property. The trust terms otherwise provide S with a qualifying income interest for life under section 2056(b)(7)(B)(ii). S dies on February 10, 1998. On April 1, 1998, D's executor files D's estate tax return on which an election is made to treat a portion of the trust as qualified terminable interest property under section 2056(b)(7). S's estate tax return is filed on November 10, 1998. The value on the date of S's death of the portion of the trust for which D's executor made a QTIP election is includible in S's gross estate under section 2044.

Par. 3. Section 20.2056(b)–7T is added to read as follows:

**§ 20.2056(b)–7T Election with respect to life estate for surviving spouse (temporary).**

(a) through (d)(2) [Reserved]. For further guidance, see § 20.2056(b)–7(a) through (d)(2).

(d)(3) *Contingent income interests.* (i) [Reserved]. For further guidance, see § 20.2056(b)–7(d)(3).

(ii) An income interest for a term of years, or a life estate subject to termination upon the occurrence of a specified event (e.g., remarriage), is not a qualifying income interest for life. However, an income interest for life (or life estate) that is contingent upon the executor's election under section 2056(b)(7)(B)(v) will not, on that basis, fail to be a qualifying income interest for life. This paragraph (d)(3)(ii) applies with respect to estates of decedents whose estate tax returns are due after February 18, 1997.

(d)(4) through (g) [Reserved]. For further guidance see § 20.2056(b)–7(d)(4) through (g).

(h) *Examples.* [Reserved]. See § 20.2056(b)–7(h).

*Example 1* through *Example 5.* [Reserved]. For further guidance, see § 20.2056(b)–7(h) *Example 1* through *Example 5.*

*Example 6.* (i) [Reserved]. For further guidance, see § 20.2056(b)–7(h) *Example 6.*

(ii) D's estate tax return is due after February 18, 1997. D's will established a trust providing that S is entitled to receive the income from that portion of the trust that the executor elects to treat as qualified terminable interest property. S's interest in the trust otherwise meets the requirements of a qualifying income interest for life under section 2056(b)(7)(B)(ii). Accordingly, the executor may elect qualified terminable interest treatment for any portion of the trust.

Par. 4. Section 20.2056(b)–10T is added to read as follows:

**§ 20.2056(b)–10T Effective dates (temporary).**

In addition to the effective dates set out in § 20.2056(b)–10, § 20.2056(b)–7T(d)(3)(ii) is effective with respect to estates of decedents dying after March 1, 1994. For further guidance, see § 20.2056(b)–10.

Margaret Milner Richardson,

*Commissioner of Internal Revenue.*

Approved: January 8, 1997.

Donald C. Lubick,

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 97–3398 Filed 2–14–97; 8:45 am]

BILLING CODE 4830–01–U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[IN68–1–7308a; FRL–5678–5]**

### Approval and Promulgation of Implementation Plans; Indiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** On October 25, 1994, the Indiana Department of Environmental Management (IDEM) submitted revisions to its State Implementation Plan (SIP). EPA made a finding of completeness in a letter dated November 25, 1994. The revisions to the SIP add or revise definitions in the Indiana SIP's general provisions (326 IAC 1–1, 326 IAC 1–2), the applicability criteria of the rule for malfunctions (326 IAC 1–6), and the applicability criteria for state construction and operating permit requirements (326 IAC 2–1). The revisions to the SIP also revise Indiana's construction permit program (326 IAC 2–1) and its ''Permit no defense'' regulation (326 IAC 2–1). With this rule, EPA is approving these SIP revisions because they are in compliance with the Code of Federal Regulations (CFR) and the Clean Air Act (Act). Elsewhere in this Federal Register, EPA is proposing approval and soliciting comment on this direct final action; if adverse comments are received, EPA will withdraw the direct final rule and address the comments received in a new final rule. Unless this direct final rule is withdrawn, no further rulemaking will occur on this requested SIP revision.

**DATES:** This action will be effective April 21, 1997 unless adverse or critical comments are received by March 20, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Mark J. Palermo at (312) 886–6082, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

**FOR FURTHER INFORMATION CONTACT:** Alvin Choi, EPA (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3507.

**SUPPLEMENTARY INFORMATION:**

I. Background

IDEM submitted revisions to the Indiana SIP on October 25, 1994. The revisions included rule changes to the State's permit review rules and adoption of the federally enforceable state operating permits program (326 IAC 2–8), source specific operating agreements (326 IAC 2–9), and enhanced new source review (NSR) rules (326 IAC 2–1–3.2). EPA has already promulgated its approval of regulations governing federally enforceable state operating permits and enhanced new source review rules (60 FR 43099) and the source specific operating agreements (61 FR 14487). The EPA is now proposing to approve the final portion of the October 25, 1994 SIP submittal which alters some prefatory language and affects applicability of some rules. The EPA is approving the following revisions to Title 326 of the Indiana Administrative Code (326 IAC)—Article One: General Provisions, Rule One: Sections 2 and 3; Rule Two: Sections 2, 4, 12, 33.1, 33.2, 33.5; Rule Six: Section 1. The EPA is also approving revisions to 326 IAC—Article Two: Permit Review Rules, Rule One: Sections 1, 3, and 10. The purpose of this revision is to update and revise the SIP to reflect statutorily-mandated changes to the permit programs. The rationale for EPA's approval is summarized in this rule. A more detailed analysis is set forth in a technical support document which is available for inspection at the Region 5 Office listed above.

II. Summary of State Submittal

The following sections of Article One, Rule One have been revised to include recent amendments to the Act and the CFR.

*326 IAC 1–1–2 References to Federal Act*

This section was revised specifically to reference the Clean Air Act Amendments of 1990 because the SIP incorporated changes required by the 1990 Amendments.

*326 IAC 1–1–3 References to the Code of Federal Regulations*

This section updates the reference to the CFR from the 1989 edition to the 1992 edition and specifically references the July 21, 1992 Federal Register with regard to 40 CFR Part 70.

The following sections of Article One have been revised to include new definitions and revisions to existing regulations.

*326 IAC 1–2–2 ''Allowable emissions'' Definition*

The previous definition calculated an allowable emission rate by combining the most stringent of three listed criteria with the maximum rated capacity of the facility (unless the facility was subject to a limit on the operating rate or hours of operation, or both). This definition has been expanded to include potential emissions and daily emission rates for noncontinuous batch manufacturing operations.

*326 IAC 1–2–4 ''Applicable state and federal regulations'' Definition*

This section has been revised to clarify that this definition includes rules adopted under 326 IAC by the air pollution control board, all regulations included in the CFR by EPA, and specific requirements established by the Act.

*326 IAC 1–2–12 ''Clean Air Act'' Definition*

This section was updated to include a reference to the Clean Air Act Amendments of 1990. The previous definition made only a general reference to the Act.

*326 IAC 1–2–33.1 ''Grain elevator'' Definition*

This new section was added to define the term used in 326 IAC 2–9–2 (Source specific restrictions and conditions). A ''Grain elevator'' is defined as ''an installation at which grains are weighed, cleaned, dried, loaded, unloaded, and placed in storage.''

326 IAC 1–2–33.2 ''Grain terminal elevator'' Definition

This new section was added to define the term used in 326 IAC 2–1–7.1 (Fees for registration, construction permits, and operating permits). A ''Grain terminal elevator'' is defined as any grain elevator which has a capacity greater than 2,500,000 U.S. bushels certified storage or 10,000,000 U.S. bushels annual grain throughput, which is the total amount of grain received or shipped by the grain elevator over the course of a calendar year.

*326 IAC 1–6–1 ''Applicability of rule''*

The owner or operator of any facility with the potential to emit at a specified emission rate, and the owner or operator of a facility with malfunctioning emission control equipment, either of whose facilities could cause emissions in excess of stated emission rates, were formerly subject to the malfunction rule. The revised section revokes the previous applicability criteria and subjects the owner or operator of any facility which is required to obtain a permit under 326 IAC 2–1–2 (Registration) or 326 IAC 2–1–4 (State Operating permits) to the malfunction rule.

The following Sections of Article 2 revise the existing regulations.

*326 IAC 2–1–1 ''Applicability of rule''*

This section determines the applicability of permit and fee requirements for, among other things, persons proposing to construct or modify sources, including sources in Lake and Porter Counties. One of the principle revisions to 326 IAC 2–1–1 is the universal replacement of the term ''potential emissions'' by ''allowable emissions''. This modification will presumably ease the State's burden in administering its air permit program by removing certain smaller sources from required review.

EPA approves this revision to encourage the state's effective administration of its permit program. EPA notes that Indiana's regulations regarding Prevention of Significant Deterioration (PSD) and NSR employ the term ''potential emissions'' in determining the applicability of those programs, and thus these revisions do not affect the applicability of those programs to any sources. Correspondence with the state confirms these conclusions.

A revision to this rule provides that the state operating permit program (326 IAC 2–1–4) does not apply if the source has an enforceable operating permit under 326 IAC 2–9. Also, an additional revision subjects to this rule any person planning to construct or operate grain terminal elevators.

The revised rules have added three criteria for determining applicability of SIP provisions. The first added criteria regulates any modification which will increase emissions of particulate matter with an aerodynamic diameter less than or equal to 10 micrometers by 15 tons per year. The second criteria includes, under the regulations, any source or facility with aggregate emissions greater than or equal to 10 tons per year of any single hazardous air pollutant (HAP) or 25 tons per year for any combination of HAPs. The third requirement includes modifications to major sources of HAPs which will increase emissions by four tons per year of any single HAP or 10 tons per year of any combination of HAPs. The third requirement also exempts any source which can demonstrate by written submission that the sum of the emission increases and decreases of any single HAP resulting from the modification does not exceed four tons per year. The third applicability criteria becomes effective only after Indiana's Part 70 program becomes effective.

Exemptions to the applicability regulations have been adopted. The first category of excluded sources includes existing sources or sources proposed to be operated, constructed, or modified, which have emissions of less than the emission limits specified in the provisions regarding either: (1) applicability of registration requirements found at 326 IAC 2–1–1(b)(2); or (2) applicability of requirements governing the construction permits, enhanced NSR, operating permits, and fees. The second category exempts existing sources who seek only changes in a method of operation, a reconfiguration of existing equipment or other minor physical changes, or a combination of the above which does not increase emissions in excess of: (1) Significance levels in PSD limitations and emissions offsets; (2) HAP levels for maximum achievable control technology; (3) specific threshold levels adopted for Lake and Porter Counties; (4) levels specified in provisions governing the applicability of regulations for construction permits, enhanced NSR, operating permits, and fees (not including the general 25 tons per year criteria); and (5) levels specified for the volatile organic compound rules. The third category exempts temporary operations and experimental trials which involve construction, reconstruction, or modification which meet specific criteria.

*326 IAC 2–1–3 Construction permits*

This revision eliminates the need for the submission of plans and specifications to be prepared by a professional engineer registered to practice in Indiana, with an application for a construction permit. The applicant, however, is now required to place a copy of the permit application for public review at a library in the county where construction is proposed. Finally, the revision requires any applicant who proposes to construct upon land which is underdeveloped or for which a valid existing permit has not been issued, to make a reasonable effort to provide notice to all owners or occupants of land adjoining the proposed construction site.

*326 IAC 2–1–10 Permit no defense*

This section states that a permit which is obtained by a source shall not be used as a defense against a violation of any regulation. An exception has been added for alleged violations of applicable requirements for which a permit shield has been granted according to 326 IAC 2–1–3.2 (Enhanced NSR) and 326 IAC 2–7–15 (Part 70 permit program; Permit shield).

The EPA is approving the revisions to the sections in 326 IAC Articles 1 and 2. These revisions add definitions which reflect new regulations added to the title and revise existing regulations which have been found to be in accordance with the CFR and the Act.

III. Rulemaking Action

Many of the revisions to the General Provisions updated definitions with respect to the 1990 Clean Air Act Amendments. Revisions were also in response to the recent addition of the Source Specific Operating Agreement program.

The changes to the Permit Review Rules are presumably intended to alleviate the permitting burden on IDEM. By using the ''allowable'' definition and adding exemption

regulations in 326 IAC 2–1–1, IDEM will be able to concentrate its resources on relatively more significant sources. For the reasons stated above, the EPA approves the plan revisions submitted on October 25, 1994, to incorporate changes to existing regulations and to accommodate recent revisions to the SIP by adding and updating regulations.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on April 21, 1997 unless, by March 20, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent rulemaking that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 21, 1997.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

*A. Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

*B. Regulatory Flexibility*

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA,* 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

*C. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

*D. Submission to Congress and the General Accounting Office*

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a major rule as defined by 5 U.S.C. 804(2).

*E. Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 21, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Lead, Particulate matter, Sulfur dioxide, Volatile organic compounds.

Dated: December 12, 1996.

Valdas V. Adamkus,

*Regional Administrator.*

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended to read as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

## Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(109) to read as follows:

### § 52.770 Identification of plan.

* * * * *

(c) * * *

(109) On October 25, 1994, the Indiana Department of Environmental Management requested a revision to the Indiana State Implementation Plan in the form of revisions to the General Provisions and Permit Review Rules intended to update and add regulations which have been affected by recent SIP revisions, and to change regulations for streamlining purposes. This revision took the form of an amendment to Title 326: Air Pollution Control Board of the Indiana Administrative Code (326 IAC) 1–1 Provisions Applicable Throughout Title 326, 1–2 Definitions, 1–6 Malfunctions, 2–1 Construction and Operating Permit Requirements.

*(i) Incorporation by reference*. 326 IAC 1–1–2 and 1–1–3. 326 IAC 1–2–2, 1–2–4, 1–2–12, 1–2–33.1, and 1–2–33.2. 326 IAC 1–6–1. 326 IAC 2–1–1, 2–1–3, and 2–1–10. Adopted by the Indiana Air Pollution Control Board March 10, 1994. Filed with the Secretary of State May 25, 1994. Effective June 24, 1994. Published at Indiana Register, Volume 17, Number 10, July 1, 1994.

* * * * *

[FR Doc. 97–3865 Filed 2–14–97; 8:45 am]

BILLING CODE 6560–50–P

**40 CFR Part 52**

**[TN–178–1–9707a; FRL–5682–9]**

## Approval and Promulgation of Implementation Plans; Hamilton County, TN

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving revisions to the Chattanooga-Hamilton County portion of the Tennessee State Implementation Plan (SIP) to allow the Chattanooga Hamilton County Air Pollution Control Bureau (CHCAPCB) to issue Federally enforceable state operating permits (FESOP). EPA is also approving the CHCAPCB's FESOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA or ''the Act'') so that the CHCAPCB may issue Federally enforceable state operating permits containing limits for hazardous air pollutants (HAP).

**DATES:** This final rule will be effective April 21, 1997 unless adverse or critical comments are received by March 20, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments should be addressed to Kelly Fortin at the EPA regional office listed below. Copies of the documents used in developing this action are available for public inspection during normal business hours at the locations listed below. Interested persons wanting to examine these documents, contained in docket number TN178–1, should make an appointment with the appropriate office at least 24 hours before the visiting day:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

U.S. Environmental Protection Agency, Region 4, Air & Radiation Technology Branch, Atlanta Federal Center, 100 Alabama Street SW., Atlanta, Georgia 30303.

Tennessee Department of the Environment and Conservation, L&C Annex, 401 Church Street, Nashville, Tennessee, 37243–1531.

Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407–2495.

**FOR FURTHER INFORMATION CONTACT:** Kelly Fortin, Air & Radiation Technology Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 100 Alabama Street SW., Atlanta, Georgia 30303, 404–562–9117. Reference file TN178–1.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Purpose

On December 15, 1995, the CHCAPCB, through the Tennessee Department of Environment and Conservation, submitted a SIP revision to make certain permits issued under the CHCAPCB's existing minor source operating permit program Federally enforceable pursuant to the EPA requirements specified in the Federal Register notice entitled ''Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans'' (see 54 FR 27274, June 28, 1989). Additional materials were provided by the CHCAPCB to EPA on August 12, 1996. The CHCAPCB requested approval of their synthetic minor source SIP provisions for the purpose of limiting emission of HAPs on December 12, 1994.

EPA has always had and continues to have the authority to enforce state and local permits which are issued under permit programs approved into the SIP. However, EPA has not always recognized as valid certain state and local permits which purport to limit a source's potential to emit. The principle purpose for adopting the regulations that are the subject of this notice is to give the CHCAPCB a Federally recognized means of expeditiously restricting potential emissions such that sources can avoid major source permitting requirements. A key mechanism for such limitations is the use of Federally enforceable state or local operating permits. The term ''Federally enforceable,'' when used in the context of permits which limit potential to emit, means ''Federally recognized.''

The SIP revision that is the subject of this action approves Sections 4–2, 4–3, 4–4, 4–8, 4–12, 4–16, 4–17, 4–18, and 4–19 of the Chattanooga Air Pollution Control Ordinance (and identical language in corresponding sections of the Hamilton County Air Pollution Control Regulation and ordinances of the nine incorporated municipalities) into the Hamilton County portion of the Tennessee SIP. In this action, EPA is only approving that portion of the State's December 15, 1995 SIP submittal for Chattanooga-Hamilton County that includes or is necessary for the implementation of the CHCAPCB's FESOP program. The remaining portion of the SIP submittal will be addressed in a separate action.

EPA has determined that the above referenced portion of the submittal and the additional materials provided by the CHCAPCB satisfy the five criteria outlined in the June 28, 1989, Federal Register notice. Please refer to section II of this notice for the criteria upon which this decision was based.

### II. Analysis of the CHCAPCB Submittal

*Criterion 1.* The county's operating permit program (i.e. the regulations or other administrative framework describing how such permits are issued) must be submitted to and approved by EPA as a SIP revision.

The Chattanooga-Hamilton County Air Pollution Control Board, operating under a certificate of exemption pursuant to Tennessee Code Annotated, Section 68–201–115, has authority to administer a state operating permits program in all areas of Hamilton County Tennessee, with the exception of Indian reservations and tribal lands. The CHCAPCB operating permits program is implemented and enforced through: (1) the Chattanooga Air Pollution Control Ordinance (within the incorporated municipality of the City of Chattanooga, Tennessee); (2) the Hamilton County Air Pollution Control regulation (in the unincorporated areas of Hamilton County, Tennessee); and (3) air pollution control ordinances prepared for and enacted in the incorporated municipalities of East Ridge, Red Bank, Soddy-Daisy, Signal Mountain, Lakesite, Walden, Collegedale, Lookout Mountain, and Ridgeside. Chattanooga, Hamilton County, and the nine municipalities have identical regulations for air pollution control, except for codification, which are implemented by the CHCAPCB. For convenience, in this document the Chattanooga codification will be used.

On December 15, 1995 the CHCAPCB, through the Tennessee Department of Environment and Conservation, submitted a SIP revision request to EPA consisting of revisions to Section 4 of the Chattanooga Air Pollution Control Ordinance (and corresponding sections of the Hamilton County Air Pollution Control Regulation and ordinances of the nine incorporated municipalities), amending the CHCAPCB's existing stationary source requirements to include provisions to issue FESOPs. This submittal is the subject of this rulemaking action.

*Criterion 2.* The SIP revision must impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits (or subsequent revisions of the permit made

in accordance with the approved operating permit program) and provide that permits which do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not ''Federally enforceable'' by EPA. Sections 4–3, 4–4 and 4–8 of the Chattanooga regulations meet this criterion.

*Criterion 3.* The state operating permit program must require that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any applicable limitations and requirements contained in the SIP, or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise ''Federally enforceable'' (e.g. standards established under sections 111 and 112 of the Clean Air Act). Sections 4–2 and 4–8(c)(11)(c) of the Chattanooga regulations meet this criterion.

*Criterion 4.* The limitations, controls, and requirements of the state's operating permits must be permanent, quantifiable, and otherwise enforceable as a practical matter. Section 4–8(c)(11)(d) of the Chattanooga regulations meets this criterion.

*Criterion 5.* The state operating permits must be issued subject to public participation. This means that the CHCAPCB agrees, as part of their program, to provide EPA and the public with timely notice of the proposal and issuance of such permits, and to provide EPA, on a timely basis, with a copy of each proposed (or draft) and final permit intended to be ''Federally enforceable.'' This process must also provide for an opportunity for public comment on the permit applications prior to issuance of the final permits. Section 4–8(c)(11)(g) of Chattanooga regulations meets this criterion.

*A. Applicability to Hazardous Air Pollutants*

CHCAPCB has also requested approval of their FESOP program under section 112(l) of the Clean Air Act for the purpose of creating Federally recognized limitations on the potential to emit for HAPs. Approval under section 112(l) is necessary because the SIP revision discussed above only extends to criteria pollutants for which EPA has established national ambient air quality standards under section 109 of the Act. Federally enforceable limits on criteria pollutants or their precursors (i.e. VOCs or PM–10) may have the incidental effect of limiting certain HAPs listed pursuant to section 112(b).[1] As a legal matter, no additional program approval by the EPA is required beyond SIP approval under section 110 in order for these criteria pollutant limits to be recognized as Federally enforceable. However, section 112 of the Act provides the underlying authority for controlling all HAP emissions, regardless of their relationship to criteria pollutant controls.

EPA has determined that the five criteria, published in the June 28, 1989, Federal Register notice, used to determine the validity of a permit that limits potential to emit for criteria pollutants pursuant to section 110 are also appropriate for evaluating the validity of permits that limit the potential to emit for HAPs pursuant to section 112(l). The June 28, 1989, Federal Register notice does not address HAPs because it was written prior to the 1990 amendments to the Clean Air Act; however, the basic principles established in the June 28, 1989, Federal Register notice are not unique to criteria pollutants. Therefore, these criteria have been extended to evaluations of permits limiting the potential to emit of HAPs.

To be recognized by EPA as a valid permit which limits potential to emit, the permit must not only meet the criteria in the June 28, 1989, Federal Register notice, but it must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) provides that EPA will recognize a permit limiting the potential to emit for HAPs only if the state program: (1) contains adequate authority to assure compliance with any section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

EPA plans to codify in Subpart E of Part 63 the approval criteria for programs limiting potential to emit HAPs. EPA anticipates that these criteria will mirror those set forth in the June 28, 1989, Federal Register notice. Permit programs which limit potential to emit for HAPs and are approved pursuant to section 112(l) of the Act prior to the planned regulatory revisions under 40 CFR Part 63, Subpart E, will be recognized by EPA as meeting the criteria in the June 28, 1989, Federal Register notice. Therefore, further approval actions for those programs will not be necessary.

EPA believes it has authority under section 112(l) to recognize FESOP programs that limit a source's potential to emit HAPs directly under section 112(l) prior to this revision to Subpart E. EPA is therefore approving the CHCAPCB FESOP program so that the CHCAPCB may issue permits that EPA will recognize as validly limiting potential to emit for HAPs.

Regarding the statutory criteria of section 112(l)(5) referred to above, EPA believes the FESOP program submitted by the CHCAPCB contains adequate authority to assure compliance with section 112 requirements since the third criterion of the June 28, 1989, notice is met; that is the CHCAPCB rules require that all requirements in the permits issued under the authority of the operating permit program must be at least as stringent as all other applicable Federally enforceable requirements.

Regarding the requirement for adequate resources, the CHCAPCB has committed to provide for adequate resources to support their FESOP program. EPA expects that resources will continue to be sufficient to administer those portions of the minor source operating permit program under which the subject permits will be issued, because the CHCAPCB has administered a minor source operating permit program for a number of years. However, EPA will monitor the implementation of the FESOP program to ensure that adequate resources are in fact available.

EPA also believes that the CHCAPCB program provides for an expeditious schedule which assures compliance with section 112 requirements. The program will be used to allow a source to establish a voluntary limit on potential to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in the CHCAPCB program would allow a source to avoid or delay compliance with a CAA requirement applicable on a particular date. In addition, the CHCAPCB's program would not allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally recognized limit by the relevant deadline.

Finally, EPA believes it is consistent with the intent of section 112 of the Act for States to provide a mechanism through which a source may avoid classification as a major source by obtaining a Federally recognized limit on its potential to emit HAPs. EPA has long recognized as valid, permit programs which limit potential to emit

[1] EPA issued guidance on January 25, 1995, addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAPs to below section 112 major source thresholds.

for criteria pollutants as a means for avoiding major source requirements under the Act. The portion of this approval which extends Federal recognition to permits containing limits on potential to emit for HAPs merely applies the same principles to another set of pollutants and regulatory requirements under the Act. It should be noted that a source that receives a Federally recognized operating permit may still need a Title V operating permit if EPA promulgates a MACT standard which requires non-major sources to obtain Title V permits.

EPA has reviewed this SIP revision and determined that the criteria for approval as provided in the June 28, 1989, Federal Register notice (54 FR 27282) and in section 112(l)(5) of the Act have been satisfied.

*B. Eligibility for Previously Issued Permits*

Eligibility for Federally enforceable permits extends not only to permits issued after the effective date of this rule, but also to permits issued under the CHCAPCB's existing rules prior to the effective date of today's rulemaking. If the CHCAPCB followed their own regulations, then the agency issued a permit that established a Federally recognized permit condition that was subject to public and EPA review. Therefore, EPA will consider all such operating permits Federally enforceable upon the effective date of this action provided that any permits that the CHCAPCB wishes to make Federally enforceable are made available to EPA and are supported by documentation that the procedures approved today have been followed. EPA may review any such permits to ensure their conformity with the program requirements.

III. Final Action

In this action, EPA is approving the CHCAPCB FESOP program. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 21, 1997 unless, by March 20, 1997, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule.

EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 21, 1997.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214–2225), as revised by the July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision of any SIP. Each request for revision of the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

*A. Clean Air Act as Amended in 1990*

EPA has reviewed the requests for revision of the Federally-approved Tennessee SIP described in this notice to ensure conformance with the provisions of the Clean Air Act as amended in 1990. EPA has determined that this action conforms with those requirements.

*B. Petition for Review*

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 21, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

*C. Executive Order 12866*

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

*D. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because approval of Federal SIP does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(R)(3).

*E. Unfunded Mandates Reform Act of 1995*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local or tribal governments in the aggregate, or to the private sector. This Federal action

approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local or tribal governments, or to the private sector, result from this action.

*F. Small Business Regulatory Enforcement Fairness Act of 1996*

Under 5 U.S.C. 801(a)(1)(A) added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Intergovernmental relations, Particulate matter, Ozone Sulfur oxides.

Dated: January 23, 1997.

A. Stanley Meiburg,

*Acting Regional Administrator.*

Part 52 of chapter I, title 40, *Code of Federal Regulations,* is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

## Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(148) to read as follows:

**§ 52.2220 Identification of plan.**

* * * * *

(c) * * *

(148) Revisions to the Hamilton County portion of the Tennessee SIP that approve the regulations for Hamilton County, the City of Chattanooga, and the municipalities of East Ridge, Red Bank, Soddy-Daisy, Signal Mountain, Lakesite, Walden, Collegedale, Lookout Mountain, and Ridgeside—submitted by the Tennessee Department of Environmental Protection on December 15, 1995.

(i) *Incorporation by reference.*

(A) Amendments to Sections 2, 3, 4, 6, 8, 12, and 16–19 of the regulation known as the ''Hamilton County Air Pollution Control Regulation,'' the ''Signal Mountain Air Pollution Control Ordinance,'' the ''Lakesite Municipal Code,'' the ''Walden Air Pollution Control Ordinance,'' the ''Lookout Mountain Air Pollution Control Ordinance,'' and the ''Ridgeside Air Pollution Control Ordinance,'' submitted on December 15, 1995 and adopted by Hamilton County on September 6, 1995 and by the following municipalities: Signal Mountain, adopted on December 11, 1995; Lakesite, adopted on November 16, 1995; Walden, adopted on December 12, 1995; Lookout Mountain, adopted on November 14, 1995; and Ridgeside, adopted on April 16, 1996.

(B) Amendments to Sections 4–2, 4–3, 4–4, 4–6, 4–8, 4–12, 4–16, 4–17, 4–18, and 4–19 of the ''Chattanooga Air Pollution Control Ordinance,'' as submitted on December 15, 1995 and adopted on August 16, 1995.

(C) Amendments to Sections 8–702, 8–703, 8–704, 8–706, 8–708, 8–712, 8–716, 8–717, 8–718, and 8–719 of the ''East Ridge City Code,'' as submitted on December 15, 1995 and adopted on September 28, 1995.

(D) Amendments to Sections 8–302, 8–303, 8–304, 8–306, 8–308, 8–312, 8–316, 8–317, 8–318, and 8–319 of the ''Red Bank Municipal Code,'' as submitted on December 15, 1995 and adopted on November 7, 1995.

(E) Amendments to Sections 8–102, 8–103, 8–104, 8–106, 8–108, 8–112, 8–116, 8–117, 8–818, and 8–119 of the ''Soddy-Daisy Municipal Code,'' as submitted on December 15, 1995 and adopted on October 5, 1995.

(F) Amendments to Sections 8–502, 8–503, 8–504, 8–506, 8–508, 5–512, 8–516, 8–517, 8–518, and 8–519 of the ''Collegedale Municipal Code,'' as submitted on December 15, 1995 and adopted on October 2, 1995.

(ii) Other materials. None.

[FR Doc. 97–3867 Filed 2–14–97; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 52

**[TX–58–1–7256, FRL–5687–1]**

## Approval and Promulgation of Air Quality Implementation Plans; Site-Specific State Implementation Plan (SIP) for the Aluminum Company of America (ALCOA) Rockdale, Texas Facility

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This action corrects three citations made in a direct final rule published on Monday, September 23, 1996 at (61 FR 49685). The direct final rule approved the State of Texas' revision to the sulfur dioxide ($SO_2$) SIP revision which became effective on November 22, 1996.

**EFFECTIVE DATE:** February 18, 1997.

**FOR FURTHER INFORMATION CONTACT:** Petra Sanchez, (214) 553–5713.

**SUPPLEMENTARY INFORMATION:**

Background

On Monday, September 23, 1996, EPA published a direct final rule (61 FR 49685) approving a revision submitted by Texas pertaining to the ALCOA SIP for sulfur dioxide $SO_2$ emissions in Rockdale, Texas.

This correction makes a minor clarification to a citation made on page 49685. In the section entitled, ''Good Engineering Practice and Stack Height Increase at Sandow Three,'' a completion date for the stack height increase cited June of 1995. June of 1995 was the date Texas required the construction of the new stack height increase to be completed. The new stack was put into service on April 23, 1995.

The second correction to the document pertains to the incorporation by reference to the State's adoption of rule revisions. On page 49688 of the approval notice under Subchapter 52.2270(c)(101)(i)(B), this section should read, ''Revisions to 30 TAC Chapter 112, Section 112.8 'Allowable Emission Rates From Solid Fossil Fuel-Fired Steam Generators,' Subsections 112.8(a) and 112.8(b) as adopted by the Texas Air Control Board on September 18, 1992, and effective on October 23, 1992.''

Last, the SIP submittal by the State cited on page 49688 under Subchapter 52.2270(c)(101)(ii)(A) stands corrected to read, '' 'Revisions to the State Implementation Plan (SIP) Concerning Sulfur Dioxide Milam County,' dated July 26, 1995, including Appendices G–2–1 through G–2–6.''

Need for Correction

As published, the direct final rule contains errors which may prove to be misleading and are in need of clarification.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior

consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*].

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: January 21, 1997.

Jerry Clifford,

*Acting Regional Administrator.*

Part 52, Chapter I, title 40, of the Code of Federal Regulations is corrected as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

## Subpart SS—Texas

2. Section 52.2270 is amended by correcting paragraphs (c)(101)(i)(B) and (c)(101)(ii)(A) to read as follows:

### § 52.2270 Identification of plan. [Corrected]

* * * * *

(c) * * *

(101) * * *

(i) * * *

(B) Revisions to 30 TAC Chapter 112, Section 112.8 'Allowable Emission Rates from Solid Fossil Fuel-Fired Steam Generators,' Subsections 112.8(a) and 112.8(b) as adopted by the Texas Air Control Board on September 18, 1992, and effective on October 23, 1992.

(ii) * * *

(A) The State submittal entitled, ''Revisions to the State Implementation Plan Concerning Sulfur Dioxide in Milam County,'' dated July 26, 1995, including Appendices G–2–1 through G–2–6.

* * * * *

[FR Doc. 97–3868 Filed 2–14–97; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 80

**[FRL–5689–2]**

## Regulations of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to the Phoenix, Arizona Moderate Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** Under section 211(k)(6) of the Clean Air Act, as amended (Act), the Administrator of EPA shall require the sale of reformulated gasoline in an ozone nonattainment area classified as Marginal, Moderate, Serious, or Severe upon the application of the governor of the state in which the nonattainment area is located. This action extends the prohibition set forth in section 211(k)(5) against the sale of conventional (*i.e.*, non-reformulated) gasoline to the Phoenix, Arizona moderate ozone nonattainment area. The Agency is revising the regulations such that the implementation date of the prohibition described herein shall take effect on the effective date of this rule or June 1, 1997, whichever is later, for all persons other than retailers and wholesale purchaser-consumers (*i.e.*, refiners, importers, and distributors). For retailers and wholesale purchaser-consumers, the implementation date of the prohibition described herein shall take effect 30 days after the effective date of this rule or July 1, 1997, whichever is later. As of the implementation date for retailers and wholesale purchaser-consumers, the Phoenix ozone nonattainment area will be a covered area for all purposes in the federal RFG program.

**DATES:** This action will be effective on April 4, 1997 unless notice is received by March 20, 1997 from someone who wishes to submit adverse or critical comments or requests an opportunity for a public hearing. If such comments or a request for a public hearing are received by the Agency, EPA will withdraw this direct final rule and a timely notice will be published in the Federal Register to indicate the withdrawal.

**ADDRESSES:** Comments should be submitted (in duplicate, if possible) to Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. A copy should also be sent to Janice Raburn at U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460. A copy should also be sent to EPA Region IX, 75 Hawthorne Street, AIR–2, 17th Floor, San Francisco, CA 94105.

Materials relevant to this document have been placed in Docket A–97–02. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material. An identical docket is also located in EPA's Region IX office in Docket A–AZ–97. The docket is located at 75 Hawthorne Street, AIR–2, 17th Floor, San Francisco, California 94105. Documents may be inspected from 9:00 a.m. to noon and from 1:00—4:00 p.m. A reasonable fee may be charged for copying docket material.

**FOR FURTHER INFORMATION CONTACT:** Janice Raburn or Paul Argyropoulos at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233–9000.

**SUPPLEMENTARY INFORMATION:** A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS) and on the Office of Mobile Sources' World Wide Web cite, http://www.epa.gov/OMSWWW. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS.
(K) Rulemaking and Reporting.
(3) Fuels.
(9) Reformulated gasoline.

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: OPTOUT.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip.

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The

software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

*Regulated entities.* Entities potentially regulated by this action are those which produce, supply or distribute motor gasoline. Regulated categories and entities include:

| Category | Examples of regulated entities |
|---|---|
| Industry .... | Petroleum refiners, motor gasoline distributors and retailers. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated (''conventional gasoline'') in the nine worst ozone nonattainment areas beginning January 1, 1995. Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline (RFG) program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values during the period 1987 though 1989.[1] Under section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the RFG program. EPA published final regulations for the RFG program on February 16, 1994. See 59 FR 7716.

Any other ozone nonattainment area classified as Marginal, Moderate, Serious, or Severe may be included in the program at the request of the Governor of the state in which the area is located. Section 211(k)(6)(A) provides that upon the application of a Governor, EPA shall apply the prohibition against selling conventional gasoline in any area requested by the Governor which has been classified under subpart 2 of Part D of Title I of the act as a Marginal, Moderate, Serious or Severe ozone nonattainment area. Subparagraph 211(k)(6)(A) further provides that EPA is to apply the prohibition as of the date the Administrator ''deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later.'' In some cases the effective date may be extended for such an area as provided in section 211(k)(6)(B) based on a determination by EPA that there is ''insufficient domestic capacity to produce'' RFG. Finally, EPA is to publish a governor's application in the Federal Register.

## II. The Governor's Request

EPA received an application from the Honorable Fife Symington, Governor of the State of Arizona, for the Phoenix moderate ozone nonattainment area to be included in the reformulated gasoline program. The Governor's letter is set out in full below.

January 17, 1997.

Ms. Carol Browner, Administrator, U.S. Environmental Protection Agency, 401 M. Street, S.W. (1101), Washington, D.C. 20460.

Dear Ms. Browner: The purpose of this letter is to request, under § 211(k)(6) of the Clean Air Act and 40 CFR 81.303, that the U.S. E.P.A. extend the requirement for reformulated gasoline (RFG) to the Phoenix Ozone Nonattainment Area beginning June 1, 1997. This ''opt-in'' request is made in accordance with the guidance provided by your agency in letters to me of December 31, 1996 and January 13, 1997.

Furthermore, I am requesting waivers related to summertime Reid Vapor Pressure (RVP) and wintertime oxygenated fuels:

—From June 1 through September 30 of each year, that the current State standard of 7.0 pounds per square inch (psi) RVP be enforced in the Phoenix Ozone Nonattainment Area; and

—That the U.S.E.P.A. preserve existing State standards for oxygenated gasoline blends.

These unique gasoline standards were submitted by Arizona in the 1993 ozone and carbon monoxide State Implementation Plan revisions required under the Clean Air Act, but no action was taken on our waiver request. I urge EPA to expeditiously approve these waivers in accordance with section 211(c)(4)(C) of the Act.

As you know, Arizona has made a good faith effort to implement its ozone nonattainment plan in compliance with all of the requirements of the Clean Air Act. Regardless, a significant proportion of the emissions reductions included in this plan were not realized due to the difficulties the State has experienced in attempting to fully implement the federal enhanced vehicular inspection and maintenance program. This problem, and continued violations of the ozone standard in Maricopa County have motivated the State to voluntarily develop and submit an ozone plan, which will include a variety of enforceable control programs designed to reduce pollution and bring about attainment of the ozone standard by 1999. Reformulated gasoline is critical to the success of this plan, and will probably provide the largest pollution reduction of any single control program contemplated in this plan.

The State will continue to evaluate gasoline formulations and other strategies for reducing ozone, carbon monoxide and particulate pollution, and may determine that another gasoline formulation provides equivalent or better emissions reductions, and is more cost-effective or represents a better overall solution to our pollution problems in the long term. In such case, the State will submit a complete opt-out request by December 31, 1997, or take other appropriate action, as described in the December 31, 1996 and January 13, 1997 letters previously mentioned.

I appreciate the prompt assistance that your Region IX staff provided on this issue. Thank you for your attention to this matter.

Sincerely,

Fife Symington,

*Governor.*

FS:sae

cc: Felicia Marcus, EPA, Region IX, Russell F. Rhoades, Arizona Department of Environmental Quality, John Hays, Arizona Department of Weights and Measures

## III. Action

Pursuant to the governor's letter and the provisions of section 211(k)(6), EPA will apply the prohibitions of subsection (211)(k)(5) to the Phoenix, Arizona moderate ozone nonattainment area as of the effective date of this rule, or June 1, 1997 whichever is later, for all persons other than retailers and wholesale purchaser-consumers. This date applies to the refinery level and all other points in the distribution system other than the retail level. For retailers and wholesale purchaser-consumers, the prohibitions of subsection (211)(k)(5) will apply 30 days after the effective date of this rule, or July 1, 1997, whichever is later. As of the implementation date for retailers and wholesale purchaser-consumers, this area will be treated as a covered area for all purposes of the federal RFG program.

The application of the prohibition of section 211(k)(5) to the Phoenix

[1] Applying these criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee.

moderate ozone nonattainment area could take effect no later than January 17, 1998 under section 211(k)(6)(A), which stipulates that the effective program date must be no ''later than January 1, 1995 or 1 year after [the Governor's] application is received, whichever is later.'' For the Phoenix nonattainment area, EPA could establish an effective date for the start of the RFG program anytime up to this date. EPA considers that January 17, 1998, would be the latest possible effective date, since EPA expects there to be sufficient domestic capacity to produce RFG and therefore has no current reason to extend the effective date beyond one year after January 17, 1998. EPA believes that there is adequate domestic capability to support the current demand for RFG nationwide as well as the addition of the Phoenix area.

Like the federal volatility program, the RFG program includes seasonal requirements. Summertime RFG must meet certain VOC control requirements to reduce emissions of VOCs, an ozone precursor. Under the RFG program, there are two compliance dates for VOC-controlled RFG. At the refinery level, and all other points in the distribution system other than the retail level, compliance with RFG VOC-control requirements is required from May 1 to September 15. At the retail level (service stations and wholesale purchaser-consumers), compliance is required from June 1 to September 15. See 40 CFR 80.78(a)(1)(v). Pipeline requirements and demands for RFG from the supply industry drive refineries to establish their own internal compliance date earlier than May so that they can assure that terminals are capable of meeting the requirements by the May 1 date. Based on past success with this implementation strategy, EPA is staggering the implementation dates for the Phoenix opt-in to the RFG program.

The Governor's request seeks an implementation date of June 1, 1997 for the RFG program in the Phoenix area. However, pursuant to its discretion to set an effective date under § 211(k)(6), EPA is establishing two implementation dates. For all persons other than retailers and wholesale purchaser-consumers (*i.e.*, refiners, importers, and distributors), implementation shall take effect on the effective date of this rule, or June 1, 1997, whichever is later. For retailers and wholesale purchaser-consumers, implementation shall take effect 30 days after the effective date of this rule or July 1, 1997, whichever is later. EPA believes these implementation dates achieve a reasonable balance between requiring the earliest possible start date and providing adequate lead time for industry to prepare for program implementation. These dates are consistent with the state's request that EPA require that the RFG program begin in the Phoenix area as early as possible in the high ozone season, which begins June 1. These dates provide environmental benefits by allowing Phoenix to achieve VOC reduction benefits for some of the 1997 VOC-controlled season. EPA believes these dates provide adequate lead time for the distribution industry to set up storage and sales agreements to ensure supply.

## IV. Public Participation and Effective Date

The Agency is publishing this action both as a proposed rulemaking and as a direct final rule because it views setting the effective date for the addition of the Phoenix ozone nonattainment area to the federal RFG program as non-controversial and anticipates no adverse or critical comments. This action will be effective April 4, 1997 unless the Agency receives notice by March 20, 1997 that adverse or critical comments will be submitted, or that a party requests the opportunity to submit such oral comments pursuant to section 307(d)(5) of the Act, as amended. If such notice is received by the Agency, EPA will withdraw this direct final rule and a timely notice will be published in the Federal Register to indicate the withdrawal.

The Governor of Arizona established in May 1996 an Air Quality Strategies Task Force to develop a report describing long- and short-term strategies that would contribute to attainment of the federal national ambient air quality standards for ozone, carbon monoxide and particulates. In July 1996, this task force recommended establishment of a Fuels Subcommittee to evaluate potential short-term and long-term fuels options for the Phoenix ozone nonattainment area. The Fuels Subcommittee was composed of representatives of a diverse mixture of interests including gasoline-related industries, public health organizations, and both in-county and out-of-county interests. Several members of the refining industry supported the opt into the federal RFG program for Phoenix for the onset of the 1997 VOC control season. The subcommittee submitted its final report to the Air Quality Strategies Task Force on November 26, 1996.

Section 211(k)(6) states that, ''[u]pon the application of the Governor of a State, the Administrator shall apply the prohibition'' against the sale of conventional gasoline in any area of the State classified as Marginal, Moderate, Serious, or Severe for ozone. Although section 211(k)(6) provides EPA discretion to establish the effective date for this prohibition to apply to such areas, and allows EPA to consider whether there is sufficient domestic capacity to produce RFG in establishing the effective date, EPA does not have discretion to deny a Governor's request. Therefore, the scope of this action is limited to setting an effective date for Phoenix's opt-in to the RFG program, and not to decide whether Phoenix should in fact opt in. For this reason, EPA is only soliciting comments addressing the implementation date and is not soliciting comments that either support or oppose Phoenix participating in the program.

## V. Environmental Impact

The federal RFG program provides reductions in ozone-forming VOC emissions, oxides of nitrogen ($NO_X$), and air toxics. Reductions in VOCs are environmentally significant because of the associated reductions in ozone formation and in secondary formation of particulate matter, with the associated improvements in human health and welfare. Exposure to ground-level ozone (or smog) can cause respiratory problems, chest pain, and coughing and may worsen bronchitis, emphysema, and asthma. Animal studies suggest that long-term exposure (months to years) to ozone can damage lung tissue and may lead to chronic respiratory illness. Reductions in emissions of toxic air pollutants are environmentally important because they carry significant benefits for human health and welfare primarily by reducing the number of cancer cases each year.

The Arizona Governor's Task Force estimates that if federal RFG is required to be sold in Phoenix, VOC emissions will be be cut by more than nine tons/day. In addition, all vehicles would have improved emissions and the area would also get reductions in toxic emissions.

## VI. Statutory Authority

The Statutory authority for the action proposed today is granted to EPA by sections 211(c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7545(c) and (k) and 7601.

## VII. Regulatory Flexibility

For the following reasons, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small

entities. In promulgating the RFG and anti-dumping regulations, the Agency analyzed the impact of the regulations on small businesses. The Agency concluded that the regulations may possibly have some economic effect on a substantial number of small refiners, but that the regulations may not significantly affect other small entities, such as gasoline blenders, terminal operators, service stations and ethanol blenders. *See* 59 FR 7810–7811 (February 16, 1994). As stated in the preamble to the final RFG/anti-dumping rule, exempting small refiners from the RFG regulations would result in the failure of meeting CAA standards. 59 FR 7810. However, since most small refiners are located in the mountain states or in California, which has its own RFG program, the vast majority of small refiners are unaffected by the federal RFG requirements (although all refiners of conventional gasoline are subject to the anti-dumping requirements). Moreover, all businesses, large and small, maintain the option to produce conventional gasoline to be sold in areas not obligated by the Act to receive RFG or those areas which have not chosen to opt into the RFG program. A complete analysis of the effect of the RFG/anti-dumping regulations on small businesses is contained in the Regulatory Flexibility Analysis which was prepared for the RFG and anti-dumping rulemaking, and can be found in the docket for that rulemaking. The docket number is: EPA Air Docket A–92–12.

Today's rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the Phoenix ozone nonattainment area, and gasoline distributors and retail stations in those areas. As discussed above, EPA determined that, because of their location, the vast majority of small refiners would be unaffected by the RFG requirements. For the same reason, most small refiners will be unaffected by today's action. Other small entities, such as gasoline distributors and retail stations located in Phoenix, which will become a covered area as a result of today's action, will be subject to the same requirements as those small entities which are located in current RFG covered areas. The Agency did not find the RFG regulations to significantly affect these entities.

VIII. Executive Order 12866

Under Executive Order 12866,[2] the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[3]

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

IX. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that today's rule does not trigger the requirements of UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

X. Submission to Congress

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: February 7, 1997.

Carol M. Browner,

*Administrator.*

40 CFR part 80 is amended as follows:

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 is revised to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.70 is amended by adding paragraph (m) to read as follows:

### § 80.70 Covered areas.

* * * * *

(m) The prohibitions of section 211(k)(5) will apply to all persons other than retailers and wholesale purchaser-consumers June 1, 1997. The prohibitions of section 211(k)(5) will apply to retailers and wholesale purchaser-consumers July 1, 1997. As of the effective date for retailers and wholesale purchaser-consumers, the Phoenix, Arizona ozone nonattainment area is a covered area. The geographical extent of the covered area listed in this paragraph shall be the nonattainment boundaries for the Phoenix ozone nonattainment area as specified in 40 CFR 81.303.

[FR Doc. 97–3926 Filed 2–14–97; 8:45 am]

BILLING CODE 6560–50–P

[2] *See* 58 FR 51735 (October 4, 1993).

[3] *Id.* at section 3(f)(1)–(4).

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 961107312–7021–02; I.D. 102296B]**

**RIN 0648–XX69**

## Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands; Final 1997 Harvest Specifications for Groundfish

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final 1997 specifications of groundfish and associated management measures; apportionment of reserves; closures and inseason adjustment.

**SUMMARY:** NMFS announces final 1997 harvest specifications of total allowable catches (TACs), initial apportionments of TACs for each category of groundfish, and associated management measures in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits and associated management measures for groundfish during the 1997 fishing year. NMFS is apportioning reserves to the initial TACs (ITACs) specified for certain species amounts to allow for full harvest opportunity of these TACs. NMFS is also closing fisheries and issuing an inseason adjustment as specified in the final 1997 groundfish specifications. These measures are intended to conserve and manage the groundfish resources in the BSAI.

**EFFECTIVE DATES:** The final 1997 harvest specifications and associated apportionment of reserves are effective at 1200 hrs, Alaska local time (A.l.t.), February 12, 1997 through 2400 hrs, A.l.t., December 31, 1997, or until changed by subsequent notification in the Federal Register. The closures to directed fishing and inseason adjustment are effective 1200 hrs, A.l.t., February 12, 1997, through 2400 hrs, A.l.t., December 31, 1997. Comments on the apportionment of reserves and inseason adjustment must be submitted by February 27, 1997.

**ADDRESSES:** The final Environmental Assessment (EA) prepared for the 1997 Total Allowable Catch Specifications may be obtained from the Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or by calling 907–586–7229. Comments on the apportionment of reserves and inseason adjustment may be sent to Ronald J. Berg at the same address. The final 1997 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 1996, is available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809).

**FOR FURTHER INFORMATION CONTACT:** Susan J. Salveson, NMFS, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

### Background

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Island Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the Magnuson-Stevens Fishery Conservation and Management Act.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the TAC for each target species and the ''other species'' category, the sum of which must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 679.20(a)(1)(i)). Regulations under § 679.20(c)(1) further require NMFS to publish annually and solicit public comment on proposed annual TACs, prohibited species catch (PSC) allowances, seasonal allowances of the pollock TAC, and amounts for the pollock and sablefish Community Development Quota (CDQ) reserve. The final specifications set forth in Tables 1–9 of this action satisfy these requirements. For 1997, the sum of TACs is 2 million mt.

The proposed BSAI groundfish specifications and specifications for prohibited species bycatch allowances for the groundfish fishery of the BSAI were published in the Federal Register on November 26, 1996 (61 FR 60076), and corrected on January 17, 1997 (62 FR 2719). Comments were invited through December 23, 1996. Two comments were received and are summarized and responded to below in the Response to Comments section. Public consultation with the Council occurred during the December 11–15, 1996, Council meeting in Anchorage, AK. After considering public comments received, as well as biological and economic data that were available at the Council's December meeting, NMFS is implementing the final 1997 specifications as recommended by the Council.

### Interim Specifications

With the exception of hook-and-line and pot gear allocation of sablefish, regulations under § 679.20(c)(2)(ii) authorize one-fourth of each proposed ITAC and apportionment thereof, one-fourth of each proposed PSC allowance, and the first proposed seasonal allowance of pollock to be in effect on January 1 on an interim basis and to remain in effect until superseded by final initial specifications. NMFS published the interim 1997 specifications in the Federal Register on November 26, 1996 (61 FR 60044), and corrected on January 16, 1997 (62 FR 2445). The final 1997 initial groundfish harvest specifications and prohibited species bycatch allowances contained in this action supersede the interim 1997 specifications.

### TAC Specifications and Acceptable Biological Catch (ABC)

The specified TAC for each species is based on the best available biological and socioeconomic information. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological information about the condition of groundfish stocks in the BSAI at their September and December 1996 meetings. This information was compiled by the Council's BSAI Groundfish Plan Team (Plan Team) and is presented in the final 1997 SAFE report for the BSAI groundfish fisheries, dated November 1996. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters. From these data and analyses, the Plan Team estimates an ABC for each species category.

A summary of the preliminary ABCs for each species for 1997 and other biological data from the September 1996 draft SAFE report were provided in the discussion supporting the proposed 1997 specifications (61 FR 60076, November 26, 1996, and corrected at 62 FR 2719, January 17, 1997). The Plan Team's recommended ABCs were reviewed by the SSC, AP, and Council at their September 1996 meetings. Based on the SSC's comments concerning technical methods and new biological data not available in September, the Plan Team revised its ABC recommendations in the final SAFE report, dated November 1996. The revised ABC recommendations were

again reviewed by the SSC, AP, and Council at their December 1996 meetings. While the SSC endorsed most of the Plan Team's recommendations for 1997 ABCs set forth in the final SAFE report, the SSC recommended revisions to ABC amounts calculated for pollock in the Bogoslof District, Greenland turbot, and sablefish. These revisions, as well as a summary of the SSC's discussion on eastern Bering Sea pollock, are discussed below.

*Eastern Bering Sea pollock.* The SSC concurred with the Plan Team's recommended 1997 ABC for eastern Bering Sea pollock (1.13 million mt). This recommendation was made after lengthy discussion about the desirability of reducing the Plan Team's recommended ABC to respond to concerns about future recruitment and potentially high fishing mortality of eastern Bering Sea pollock in Russian waters. The SSC's discussion focused on the following issues: (1) Choice of models used to estimate 1997 eastern Bering Sea stock biomass, (2) choice of fishing mortality rates upon which to base 1997 ABC, (3) the strengths and weaknesses of the Plan Team's forecast of incoming year-classes, (4) the effects of spatial and temporal distribution of fishing effort for pollock on the ecosystem, (5) the utility of foregoing catch from the upcoming harvest cycle, (6) impacts of Russian pollock harvests on the eastern Bering Sea stock, and (7) industry and conservation group recommendations for harvest levels in 1997.

The SSC discussed the relative merits of lowering ABC to forego catch in 1997 as a means to promote improved future recruitment and/or provide additional fish in subsequent years. The SSC concluded that the high natural mortality rate of pollock would greatly diminish any foregone catch before it could contribute to the next spawning cycle or before it became vulnerable to the next fishing season. Furthermore, pollock recruitment is highly variable at all levels of spawning stock size, so the addition of a small increment in spawning biomass through foregone catch in 1997 likely would have no discernible impact on future recruitment. The SSC concluded that uncertainty in estimates of future recruitment is a function of a declining population biomass, variability in environmental conditions affecting young pollock, an unquantifiable level of removals of eastern Bering Sea pollock in Russian waters, and variability in the assumed linear relationship between age 1 pollock in the NMFS bottom trawl survey and recruitment at age 3. If pollock biomass continues to decline, fishing mortality will be adjusted downward for increasingly conservative management in future years. In 1997, data from a scheduled NMFS hydroacoustic trawl survey will be used to assess the status of this stock, as well as any necessary changes in its management for 1998.

*Bogoslof pollock.* NMFS 1996 survey data are used to estimate the biomass of Bogoslof pollock at 682,000 mt, a significant reduction from the 1995 estimate of 1.1 million mt. The Plan Team recommended an ABC of 115,000 mt based on a fishing mortality rate of about 21 percent applied to a projected 1997 biomass of 558,000 mt. The SSC believed the Bogoslof ABC should be reduced by the ratio of current biomass to target biomass, where target biomass is assumed to be 2 million mt. Consequently, the SSC recommended a 1997 Bogoslof ABC of 32,100 mt. The corresponding overfishing level, 43,800 mt, is estimated using a 30-percent exploitation rate adjusted by the ratio of current to target biomass.

The Council recommended that pollock be closed to directed fishing in the Bogoslof District and that a TAC of 1,000 mt be established to provide for bycatch in other groundfish fisheries. This recommendation was intended to accommodate uncertainty about whether or not Bogoslof pollock are a distinct self-sustaining population or surplus fish from the shelf populations. The Council's TAC recommendation also addresses concerns about the potential impacts of undocumented fishing effort in the Russian zone on young pollock that are primarily considered to be of U.S. origin. The Council's TAC recommendation is adopted in these final specifications (Table 1).

*Greenland turbot.* The Plan Team's ABC recommendation for Greenland turbot (16,800 mt) was based on a stock synthesis analysis of the status of this resource that is sensitive to the relative contributions of the longline and trawl fisheries to the total fishing mortality. In recent years, the longline fleet has taken about 80 percent of the total catch. Based on the assumption that the longline fleet will continue to take this proportion of total catch, the Plan Team recommended an ABC based on an exploitation rate of 0.346. However, the SSC asserted that difficulties exist in predicting the percentage of the total catch that trawl and longline gear will harvest and believed that a 50/50 split should be assumed in the development of ABC. This assumed split dictates an exploitation rate of 0.253, adjusted by a ratio of the current female spawning biomass and the $B_{40\%}$ female spawning biomass (.94) as required under the Council's management strategy set out under Amendment 44 to the FMP. The application of this adjusted rate to the projected 1997 exploitable biomass results in an ABC of 14,400 mt. The declined status of this resource further prompted the SSC to recommend a phase in of the ABC over a 2-year period. Therefore, given that the ABC recommended by the SSC for this species in 1996 was 10,300 mt, the 1997 ABC suggested by the SSC is 12,350 mt.

The SSC concurred with the Plan Team's recommendation that the ABC be split so that two-thirds of the TAC is apportioned to the Bering Sea subarea and one-third is apportioned to the Aleutian Islands subarea. The intent of this apportionment is to spread fishing effort over a larger area and to avoid localized depletion. Using the SSC's recommended total ABC, this apportionment scheme results in eastern Bering Sea and Aleutian Islands ABCs of 8,275 mt and 4,075 mt, respectively. The Council concurred with the SSC's recommendation for ABC and adopted a 9,000-mt TAC, as recommended by the AP, with 6,030 mt and 2,970 mt apportioned to the Bering Sea and Aleutian Islands subareas, respectively.

*Sablefish.* The final 1997 SAFE report presents a revised assessment of exploitable biomass for BSAI and Gulf of Alaska sablefish that is higher relative to the preliminary assessment developed by the Plan Team in September 1996. This increase results from technical adjustments to the assessment model.

Nonetheless, the model indicates a declining trend in biomass due to low recruitment since 1981. A significant chance exists that biomass will drop below the lowest observed levels (post 1979) by the year 2001. The Plan Team's ABC recommendation, 3,060 mt for the combined Bering Sea and Aleutian Islands subareas, would result in an increase in actual exploitation rate. This fact, combined with 15 years of low recruitment prompted the SSC to defer to the NMFS stock assessment authors' more conservative recommendation for ABC; 1,308 mt for the eastern Bering Sea and 1,367 mt for the Aleutian Islands.

The Council adopted the SSC's recommendations for the 1997 ABCs. The final ABCs are listed in Table 1.

The Council adopted the AP's recommendations for TAC amounts. These recommendations were based on the final ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC in the required OY range of 1.4–2.0 million mt. None of the Council's recommended TACs for 1997

exceeds the final 1997 ABC for any species category. Therefore, NMFS finds that the recommended TACs are consistent with the biological condition of groundfish stocks. The final TACs and overfishing levels for groundfish in the BSAI area for 1997 are given in Table 1 of this action.

Apportionment of TAC

Except for the hook-and-line and pot gear allocation of sablefish, each species' TAC initially is reduced by 15 percent to establish the ITAC for each species (§ 679.20(b)(1)(i)). The sum of the 15-percent amounts is the reserve. One-half of the pollock TACs placed in reserve is designated as a community development quota (CDQ) reserve for use by CDQ participants (§ 679.31(a)(1)). The remainder of the reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the ''other species'' category during the year, providing that such reapportionments do not result in overfishing.

Table 1 lists the final 1997 ABC, TAC, and ITAC amounts, overfishing levels, and initial apportionments of groundfish in the BSAI. The apportionment of reserves to certain species ITAC amounts, as well as the apportionment of TAC amounts among fisheries and seasons, are discussed below.

TABLE 1.—FINAL 1997 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA [1]

| Species | ABC | TAC | ITAC [2] [3] | Overfishing level |
|---|---|---|---|---|
| Pollock: | | | | |
| Bering Sea (BS) | 1,130,000 | 1,130,000 | 960,500 | 1,980,000 |
| Aleutian Islands (AI) | 28,000 | 28,000 | 23,800 | 38,000 |
| Bogoslof District | 32,100 | 1,000 | 850 | 43,800 |
| Pacific cod | 306,000 | 270,000 | 229,500 | 418,000 |
| Sablefish: | | | | |
| BS | 1,308 | 1,100 | 468 | 2,750 |
| AI | 1,367 | 1,200 | 255 | 2,860 |
| Atka mackerel Total | 66,700 | 66,700 | 56,695 | 81,600 |
| Western AI | 32,200 | 32,200 | 27,370 | ..... |
| Central AI | 19,500 | 19,500 | 16,575 | ..... |
| Eastern AI/BS | 15,000 | 15,000 | 12,750 | ..... |
| Yellowfin sole | 233,000 | 230,000 | 195,500 | 339,000 |
| Rock sole | 296,000 | 97,185 | 82,607 | 427,000 |
| Greenland turbot Total | 12,350 | 9,000 | 7,650 | 22,600 |
| BS | 8,275 | 6,030 | 5,125 | ..... |
| AI | 4,075 | 2,970 | 2,525 | ..... |
| Arrowtooth flounder | 108,000 | 20,760 | 17,646 | 167,000 |
| Flathead sole | 101,000 | 43,500 | 36,975 | 145,000 |
| Other flatfish [4] | 97,500 | 50,750 | 43,138 | 150,000 |
| Pacific ocean perch: | | | | |
| BS | 2,800 | 2,800 | 2,380 | 5,400 |
| AI Total | 12,800 | 12,800 | 10,880 | 25,300 |
| Western AI | 6,390 | 6,390 | 5,431 | ..... |
| Central AI | 3,170 | 3,170 | 2,695 | ..... |
| Eastern AI | 3,240 | 3,240 | 2,754 | ..... |
| Other red rockfish: [5] BS | 1,050 | 1,050 | 893 | 1,400 |
| Sharpchin/Northern: AI | 4,360 | 4,360 | 3,706 | 5,810 |
| Shortraker/Rougheye: AI | 938 | 938 | 797 | 1,250 |
| Other rockfish [6] | | | | |
| BS | 373 | 373 | 317 | 497 |
| AI | 714 | 714 | 607 | 952 |
| Squid | 1,970 | 1,970 | 1,675 | 2,620 |
| Other Species [7] | 25,800 | 25,800 | 21,930 | 138,000 |
| Totals | 2,464,130 | 2,000,000 | 1,698,769 | 3,998,839 |

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the BS includes the Bogoslof District.

[2] Except for the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves. One-half of the amount of the pollock TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (See § 679.31(a)(1)).

[3] Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear is reserved for use by CDQ participants (See § 679.31(c)). Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. The ITAC for sablefish reflected in Table 1 is for trawl gear only.

[4] ''Other flatfish'' includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[5] ''Other red rockfish'' includes shortraker, rougheye, sharpchin, and northern.

[6] ''Other rockfish'' includes all *Sebastes and Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye.

[7] ''Other species'' includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

Apportionment of Reserves

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the ITACs specified for the following species need to be supplemented from the nonspecific reserve because U.S. fishing vessels have demonstrated the capacity to harvest the full TAC amounts: Pollock in the Bering Sea subarea, pollock in the Aleutian Islands subarea, Atka mackerel in the BSAI, Pacific ocean perch in the Aleutian Islands subarea, and Pacific cod in the BSAI. Initial TACs for these species have been supplemented from the nonspecific reserve during the past 5 years, and no reason exists to not make available the full TAC amounts for these species at the beginning of the fishing year to enhance the ability of the industry to plan accordingly. During its December 1996 meeting, the Council specifically received testimony from representatives for the Pacific cod industry to release reserves at the beginning of the year and in a manner that complies with the apportionment of the initial ITAC (see below).

Therefore, in accordance with § 679.20(b)(3), NMFS is apportioning amounts from the reserve necessary to increase the initial TAC to the full TAC amount for the following species, except for pollock, where the TAC still is reduced by 7.5 percent to provide for the CDQ reserve.

| Species—area or subarea | Reserve amount (mt) |
|---|---|
| Pollock—Bering Sea | 84,750 |
| Pollock—Aleutian Is. | 2,100 |
| Atka Mackerel—Western Aleutian Is. | 4,830 |
| Atka Mackerel—Central Aleutian Is. | 2,925 |
| Atka mackerel—Eastern Aleutian Is. and Bering Sea Subarea | 2,250 |
| Pacific Ocean perch—Western Aleutian Is. | 959 |
| Pacific Ocean perch—Central Aleutian Is. | 475 |
| Pacific Ocean perch—Eastern Aleutian Is. | 486 |
| Pacific cod—BSAI | 40,500 |
| Total | 139,275 |

This apportionment of reserve is consistent with § 679.20(b)(3). If applicable, these TACs are apportioned among seasons or gear types as authorized below.

Seasonal Allowances of Pollock TACs

Under § 679.20(a)(5)(i)(A), the pollock TAC for each subarea or district of the BSAI is divided, after subtraction of reserves (§ 679.20(b)(1)), into two seasonal allowances. The first allowance is available for directed fishing from January 1 to April 15 (roe season) and the second allowance is available from September 1 until November 1 (non-roe season).

The Council recommended that the seasonal allowances for the Bering Sea pollock roe and non-roe seasons be specified at 45 percent and 55 percent of the TAC amounts, respectively (Table 2). These percentages are unchanged since 1993. As in past years, the pollock TAC amounts specified for the Aleutian Islands subarea and the Bogoslof District are not seasonally apportioned.

When specifying seasonal allowances of the pollock TAC, the Council and NMFS considered the factors specified in section 14.4.10 of the FMP. A discussion of these factors relative to the roe and non-roe seasonal allowances was presented in the proposed 1995 specifications for BSAI groundfish (59 FR 64383, December 14, 1994). At this time, the Council's findings are unchanged from those set forth for 1995, given that the relative seasonal allowances are the same.

Apportionment of the Pollock TAC to the Inshore and Offshore Components

Regulations at § 679.20(a)(6)(i) require that the pollock TAC amounts specified for the BSAI be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component. Definitions of these components are found at § 679.2. The 1997 TAC specifications are consistent with these requirements (Table 2).

TABLE 2.—SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TAC AMOUNTS [1] [2]

| Subarea | TAC | ITAC [3] | Roe season [4] | Non-roe season [5] |
|---|---|---|---|---|
| Bering Sea: | | | | |
| Inshore | ..... | 365,837 | 164,627 | 201,210 |
| Offshore | ..... | 679,413 | 305,736 | 373,677 |
| | 1,130,000 | 1,045,250 | 470,363 | 574,887 |
| Aleutian Islands: | | | | |
| Inshore | ..... | 9,065 | 9,065 | ([6]) |
| Offshore | ..... | 16,835 | 16,835 | ([6]) |
| | 28,000 | 25,900 | 25,900 | ([6]) |
| Bogoslof District: | | | | |
| Inshore | ..... | 298 | 298 | ([6]) |
| Offshore | ..... | 552 | 552 | ([6]) |
| | 1,000 | 850 | 850 | ([6]) |

[1] TAC = total allowable catch.
[2] Based on an offshore component allocation of 65 percent (ITAC) and an inshore component allocation of 35 percent (ITAC).
[3] ITAC = initial TAC = 85 percent of TAC for the Bogoslof District and 92.5 percent of TAC for the Bering Sea and Aleutian Islands subareas. The ITAC for the Bering Sea and Aleutian Islands subareas reflects the apportionment of nonspecified reserve amounts.

[4] January 1 through April 15—based on a 45/55 split (roe = 45 percent). Up to 100 percent of the ITAC specified for the Aleutian Islands subarea and the Bogoslof District may be harvested during the roe season.
[5] September 1 until November 1—based on a 45/55 split (non-roe = 55 percent).
[6] Remainder.

Apportionment of the Pollock TAC to the Western Alaska Community Development Quota

Regulations at § 679.31(a)(1) require one-half of the pollock TAC placed in the reserve for each subarea or district, or 7.5 percent of each TAC, be assigned to a CDQ reserve for each subarea or district. The 1997 CDQ reserve amounts for each subarea are as follows:

| BSAI subarea | Pollock CDQ (mt) |
|---|---|
| Bering Sea | 84,750 |
| Aleutian Islands | 2,100 |
| Bogoslof | 75 |
| Total | 86,925 |

Under regulations governing the CDQ program at subpart C of part 679, NMFS may allocate the 1997 pollock CDQ reserves to eligible Western Alaska communities or groups of communities that have an approved community development plan (CDP). NMFS has approved six CDPs and associated percentages of the CDQ reserve for each CDP recipient for 1996–98 (60 FR 66516, December 22, 1995). Table 3 lists the approved CDP recipients, and each recipient's allocation of the 1997 pollock CDQ reserve for each subarea.

TABLE 3.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS AND SEASONAL ALLOWANCES (METRIC TONS) OF THE 1997 POLLOCK CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS, AND THE BOGOSLOF DISTRICT (BD) AMONG APPROVED CDP RECIPIENTS

| CDP recipient | Percent | Area | Allocation | Roe-season allowance [1] |
|---|---|---|---|---|
| Aleutian Pribilof Island Community Development Assn | 16 | BS | 13,560 | 6,102 |
| | | AI | 336 | 336 |
| | | BD | 12 | 12 |
| Total | | | 13,908 | 6,450 |
| Bristol Bay Economic Development Corp | 20 | BS | 16,950 | 7,627 |
| | | AI | 420 | 420 |
| | | BD | 15 | 15 |
| Total | | | 17,385 | 8,062 |
| Central Bering Sea Fishermen's Assn | 4 | BS | 3,390 | 1,526 |
| | | AI | 84 | 84 |
| | | BD | 3 | 3 |
| Total | | | 3,477 | 1,613 |
| Coastal Villages Fishing Coop | 25 | BS | 21,188 | 9,535 |
| | | AI | 525 | 525 |
| | | BD | 19 | 19 |
| Total | | | 21,732 | 10,079 |
| Norton Sound Fisheries Development Corp | 22 | BS | 18,645 | 8,390 |
| | | AI | 462 | 462 |
| | | BD | 16 | 16 |
| Total | | | 19,123 | 8,868 |
| Yukon Delta Fisheries Development Corp | 13 | BS | 11,017 | 4,958 |
| | | AI | 273 | 273 |
| | | BD | 10 | 10 |
| Total | | | 11,300 | 5,241 |
| Total | 100 | | 86,925 | 40,313 |

[1] No more than 45 percent of a CDP recipient's 1997 Bering Sea pollock allocation may be harvested during the pollock roe season, January 1 through April 15. Up to 100 percent of a recipient's 1997 Aleutian Islands or Bogoslof District pollock allocation may be harvested during this time period.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7), 2 percent of the Pacific cod TAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. The portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processor vessels (§ 679.20(a)(7)(i)(B)).

At its December 1996 meeting, the Council recommended seasonal allowances of the portion of the Pacific cod TAC allocated to vessels using hook-and-line or pot gear. Seasonal allowances are authorized under § 679.20(a)(7)(iv) for the following three time periods: January 1 through April 30; May 1 through August 31; and September 1 through December 31. The intent of the seasonal allowances is to provide for the harvest of Pacific cod when flesh quality and market conditions are optimum and Pacific halibut bycatch rates are low. The Council's recommendations for seasonal allowances are based on: (1) Seasonal distribution of Pacific cod relative to prohibited species distributions, (2)

variations in prohibited species bycatch rates experienced in the Pacific cod fisheries throughout the year, and (3) economic effects of seasonal allowances of Pacific cod on the hook-and-line and pot gear fisheries. Regulations at § 679.20(a)(7)(iv)(C) authorize NMFS, after consultation with the Council, to determine the manner in which an unused portion of a seasonal allowance of Pacific cod will be reapportioned to remaining seasons during the same fishing year. Accordingly, the Council recommmended that any unused portion of the first seasonal Pacific cod allowance specified for the Pacific cod hook-and-line or pot gear fishery be reapportioned to the third seasonal allowance. NMFS concurs with this recommendation. The gear allocations and associated seasonal allowances of the Pacific cod TAC are specified in Table 4.

TABLE 4.—1997 GEAR SHARES OF THE BSAI PACIFIC COD TAC

| Gear | Percent TAC | Share TAC (mt) | Seasonal apportionment | | |
|---|---|---|---|---|---|
| | | | Date | Percent | Amount (mt) |
| Jig | 2 | 5,400 | Jan. 1–Dec. 31 | 100 | 5,400 |
| Hook-and-line and pot gear | 51 | 137,700 | Jan. 1–Apr. 30 | 73 | [1] 100,521 |
| | | | May 1–Aug. 31 | 23 | 31,671 |
| | | | Sep. 1–Dec. 31 | 4 | 5,508 |
| Trawl gear [2]: | | | | | |
| Total | 47 | 126,900 | Jan. 1–Dec. 31 | 100 | 126,900 |
| Catcher vessel | | 63,450 | | | |
| Catcher/processor | | 63,450 | | | |
| Total | 100 | 270,000 | | | |

[1] Any unused portion of the first seasonal Pacific cod allowance specified for the Pacific cod hook-and-line or pot gear fishery will be reapportioned to the third seasonal allowance

[2] The portion of the Pacific cod TAC allocated to trawl gear is apportioned 50 percent to catcher vessels and 50 percent to catcher/processors under § 679.20(a)(7)(i)(B).

Sablefish Gear Allocation and CDQ Allocations for Sablefish

Regulations at § 679.20(a)(4) require that sablefish TACs for the BSAI subareas be divided between trawl and hook-and-line/pot gear types. Gear allocations of TACs are established in the following proportions: Bering Sea subarea: Trawl gear—50 percent; hook-and-line/pot gear—50 percent; and Aleutian Islands subarea: Trawl gear—25 percent; hook-and-line/pot gear—75 percent. In addition, regulations under § 679.31(c) require NMFS to withhold 20 percent of the hook-and-line and pot gear sablefish allocation as sablefish CDQ reserve. Gear allocations of sablefish TAC and CDQ reserve amounts are specified in Table 5.

TABLE 5.—1997 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

| Subarea | Gear | Percent of TAC (mt) | Share of TAC (mt) | Initial TAC (mt) | CDQ reserve |
|---|---|---|---|---|---|
| Bering Sea | Trawl | 50 | 550 | 468 | N/A |
| | Hook-and-line/pot gear [2] | 50 | 550 | N/A | 110 |
| Total | | | 1,100 | 468 | 110 |
| Aleutian Islands | Trawl | 25 | 300 | 255 | N/A |
| | Hook-and-line/pot gear [2] | 75 | 900 | N/A | 180 |
| Total | | | 1,200 | 255 | 180 |

[1] Except for the sablefish hook-and-line and pot gear allocation, 15 percent of TAC is apportioned to reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Under regulations governing the sablefish CDQ program at subpart C of part 679, NMFS may allocate the 1997 sablefish CDQ reserve to eligible Western Alaska communities or groups of communities that have an approved CDP. NMFS has approved seven CDPs and associated percentages of the sablefish CDQ reserve for each CDP recipient for 1995–97 (59 FR 61877, December 2, 1994). Table 6 lists the approved CDP recipients and each recipient's allocation of the 1997 sablefish CDQ reserve for each subarea.

TABLE 6.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS (MT) OF THE 1997 SABLEFISH CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS AMONG APPROVED CDP RECIPIENTS

| Sablefish CDP recipient | Area | Percent | Allocation (mt) |
|---|---|---|---|
| Atka Fishermen's Association | BS | 0 | 0 |

TABLE 6.—APPROVED SHARES (PERCENTAGES) AND RESULTING ALLOCATIONS (MT) OF THE 1997 SABLEFISH CDQ RESERVE SPECIFIED FOR THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) SUBAREAS AMONG APPROVED CDP RECIPIENTS—Continued

| Sablefish CDP recipient | Area | Percent | Allocation (mt) |
|---|---|---|---|
| | AI | 0 | 0 |
| Bristol Bay Economic Development Corp. | BS | 0 | 0 |
| | AI | 25 | 45 |
| Coastal Villages Fishing Cooperative | BS | 0 | 0 |
| | AI | 25 | 45 |
| Norton Sound Economic Development Corporation | BS | 25 | 28 |
| | AI | 30 | 54 |
| Pribilof Island Fishermen | BS | 0 | 0 |
| | AI | 0 | 0 |
| Yukon Delta Fisheries Development Association | BS | 75 | 82 |
| | AI | 10 | 18 |
| Aleutian Pribilof Islands Community Development Association | BS | 0 | 0 |
| | AI | 10 | 18 |
| Total | BS | 100 | 110 |
| | AI | 100 | 180 |

Allocation of Prohibited Species Catch (PSC) Limits for Crab, Halibut, and Herring

PSC limits of *C. bairdi* Tanner crab in Bycatch Limitation Zones (50 CFR 679.2) of the Bering Sea subarea and for Pacific halibut throughout the BSAI are established under § 679.21(e) as follows:

—Zone 1 trawl fisheries, 1 million *C. bairdi* Tanner crabs;
—Zone 2 trawl fisheries, 3 million *C. bairdi* Tanner crabs;
—BSAI trawl fisheries, 3,775 mt mortality of Pacific halibut;
—BSAI nontrawl fisheries, 900 mt mortality of Pacific halibut;

Regulations at § 679.21(e) also require that a PSC limit for red king crab in Zone 1 and for Pacific herring in the BSAI be specified annually based on abundance and spawning biomass criteria. Under new regulations implementing Amendment 37 to the FMP (61 FR 65985, December 16, 1996), the 1997 red king crab PSC limit in zone 1 is 100,000 crab based on the following criteria set out at § 679.21(e)(1)(i)(B): The number of mature female red king crab is above the threshold of 8.4 million mature crab and the effective spawning biomass is greater than 14.5 but less than 55 million lbs (24,948 mt). Based on a length-based analysis of NMFS 1996 trawl survey data, the Alaska Department of Fish and Game (ADF&G) estimates the abundance of mature females is 10.2 million crab and effective spawning biomass is 20.3 million lbs (9,206 mt).

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass (§ 679.21(e)(v)). The best estimate of 1997 herring biomass is 157,887 mt. This amount was derived using 1996 survey data and an age-structured biomass projection model developed by ADF&G. Therefore, the herring PSC limit for 1997 is 1,579 mt.

The *C. bairdi* PSC limits currently established in regulations are subject to change pending the approval of Amendment 41 to the FMP adopted by the Council at its September 1996 meeting. A proposed rule to implement Amendment 41 was published in the Federal Register on January 2, 1997 (62 FR 85). Based on the proposed rule and pending approval of Amendment 41 by NMFS, the 1997 *C. bairdi* PSC limit in Zones 1 and 2 would be adjusted downward to 750,000 crab and 2,100,000 crab, respectively. If Amendment 41 is not approved, the *C. bairdi* PSC limits will remain unchanged. At its December 1996 meeting, the Council also adopted a new PSC limit for *C. opilio* Tanner crab. NMFS anticipates that a proposed rule, as well as a proposed 1997 PSC limit for *C. opilio* crab, will be published in the Federal Register for public review and comment by March 1997.

Regulations under § 679.21(e)(3) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories. Regulations at § 679.21(e)(3)(iv) specify seven trawl fishery categories (midwater pollock, Greenland turbot/arrowtooth flounder/sablefish, rock sole/flathead sole/other flatfish, yellowfin sole, rockfish, Pacific cod, and bottom pollock/Atka mackerel/''other species''). Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the nontrawl halibut PSC limit among five fishery categories (Pacific cod hook-and-line, sablefish hook-and-line, groundfish pot gear, groundfish jig gear, and other nontrawl fishery categories). The fishery bycatch allowances for the trawl and nontrawl fisheries are listed in Table 7.

Regulations at § 679.21(e)(3)(ii)(B) require that an amount of the red king crab PSC limit be specified for the red king crab savings subarea (RKCSS), defined at § 679.21(e)(3)(ii)(B)(*1*), if the subarea is open to fishing by vessels using nonpelagic trawl gear. Under provisions of these regulations, the RKCSS will be open to fishing with nonpelagic trawl gear in 1997 because ADF&G had established a 1996 guideline harvest level for the commercial red king crab fishery in Bristol Bay. Consistent with § 679.21(e)(3)(ii)(B)(*2*), the red king crab bycatch allowance specified for the RKCSS is an amount equal to 35 percent of the red king crab bycatch allowance recommended by the Council for the rock sole/flathead sole/other flatfish fishery category (75,000 crab), or 26,250 crab. The bycatch allowance specified in Table 7 for the rock sole/flathead sole/other flatfish fishery category is reduced correspondingly to 48,750 crab. When the total number of red king crab taken by trawl vessels fishing in the RKCSS reaches the specified bycatch allowance, further directed fishing for groundfish in the RKCSS by vessels using nonpelagic trawl gear will be prohibited.

The fishery bycatch allowances listed in Table 7 reflect the recommendations made to the Council by its AP. With the exception of the red king crab bycatch allowance specified for the RKCSS, these recommendations generally reflect those established for 1996. The prohibited species bycatch allowances primarily were based on 1996 bycatch amounts, anticipated 1997 harvest of groundfish by trawl gear and fixed gear,

and assumed halibut mortality rates in the different groundfish fisheries.

Regulations at § 679.21(e)(4)(i) allow NMFS to exempt specified nontrawl fisheries from the halibut PSC limit. As in 1995 and 1996, the Council recommended that the pot gear, jig gear, and sablefish hook-and-line gear fishery categories be exempt from the halibut bycatch restrictions.

The Council recommended that the pot and jig gear fisheries be exempt from halibut-bycatch restrictions because these fisheries use selective gear types that experience low halibut bycatch mortality. In 1996, total groundfish catch for the pot gear fishery in the BSAI was approximately 33,841 mt with an associated halibut bycatch mortality of about 21 mt. The 1996 groundfish jig gear fishery harvested about 264 mt of groundfish. The jig gear fleet is comprised of vessels less than 60 ft (18.3 m) length overall that are exempt from observer coverage requirements. As a result, no observer data are available on halibut bycatch in the BSAI jig gear fishery. Nonetheless, the selective nature of this gear type and the relatively small amount of groundfish harvested with jig gear likely results in a negligible amount of halibut bycatch mortality.

As in 1995 and 1996, the Council recommended that the sablefish Individual Fishing Quota (IFQ) fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of part 679). The IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard. The best available information on the 1995 sablefish IFQ fishery indicates that less than 40 mt of halibut discard mortality was associated with this fishery. An estimate of halibut bycatch mortality associated with the 1996 sablefish IFQ fishery is not available. Nonetheless, no reason exists to suggest the 1996 bycatch mortality in this fishery differed significantly from that estimated for 1995.

TABLE 7.—FINAL 1997 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES

| | Zone 1 | Zone 2 | BSAI-wide |
|---|---|---|---|
| **Trawl fisheries** | | | |
| Red king crab, number of animals: | | | |
| Yellowfin sole | 10,000 | | |
| Rock sole/flathead sole/other flatfish | 48,750 | | |
| Greenland turbot/arrowtooth/sablefish | 0 | | |
| Rockfish | 0 | | |
| Pacific cod | 7,500 | | |
| Pollock/Atka mackerel/other species | 7,500 | | |
| Red king crab savings subarea [1] | 26,250 | | |
| Total | 100,000 | | |
| *C. Bairdi* tanner crab, number of animals: | | | |
| Yellowfin sole | 368,421 | 1,530,000 | |
| Rock sole/flathead sole/other flatfish | 394,736 | 510,000 | |
| Greenland turbot/arrowtooth/sablefish | 0 | 0 | |
| Rockfish | 0 | 10,000 | |
| Pacific cod | 177,632 | 278,571 | |
| Pollock/Atka mackerel/other species | 59,211 | 671,429 | |
| Total | 1,000,000 | 3,000,000 | |
| Pacific halibut, mortality (MT): | | | |
| Yellowfin sole | | | 930 |
| Rock sole/flathead sole/other flatfish | | | 795 |
| Greenland turbot/arrowtooth/sablefish | | | 0 |
| Rockfish | | | 100 |
| Pacific cod | | | 1,600 |
| Pollock/Atka mackerel/other species | | | 350 |
| Total | | | 3,775 |
| Pacific herring (MT): | | | |
| Midwater pollock | | | 1,142 |
| Yellowfin sole | | | 267 |
| Rock sole/flathead sole/other flatfish | | | 0 |
| Greenland turbot/arrowtooth/sablefish | | | 0 |
| Rockfish | | | 7 |
| Pacific cod | | | 20 |
| Pollock/Atka mackerel/other species | | | 143 |
| Total | | | 1,579 |
| **Nontrawl Fisheries** | | | |
| Pacific halibut, mortality (MT): | | | |
| Pacific cod hook-and-line | | | 840 |
| Sablefish hook-and-line | | | ([2]) |
| Groundfish pot gear | | | ([2]) |
| Groundfish jig gear | | | ([2]) |
| Other nontrawl | | | 60 |

TABLE 7.—FINAL 1997 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NONTRAWL FISHERIES—Continued

| | Zone 1 | Zone 2 | BSAI-wide |
|---|---|---|---|
| Total | ..... | ..... | 900 |

[1] The red king crab savings subarea is defined at § 679.21(e)(3)(ii)(B) as the portion of the red king crab savings area between 56°00′ and 56°10′ N. lat. The amount of the red king crab bycatch limit specified for this area under § 679.21(e)(3)(ii)(B)(*2*) is not designated by fishery and, when reached, will result in closure of the subarea to directed fishing for groundfish with nonpelagic gear (§ 679.21(e)(7)(ii)(B)).
[2] Exempt.

Seasonal Apportionments of PSC limits

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of prohibited species bycatch allowances. At its December 1996 meeting, the Council recommended that the trawl fishery halibut bycatch allowances, and the halibut bycatch allowance apportioned to the Pacific cod hook-and-line gear fishery be seasonally apportioned as shown in Table 8. The recommended seasonal apportionments reflect recommendations made to the Council by its AP.

The Council recommended seasonal apportionments of the halibut bycatch allowances specified for the trawl flatfish and rockfish fisheries to provide additional fishing opportunities in the BSAI early in the year and to reduce the incentive for trawl vessel operators to move from the BSAI to the Gulf of Alaska after the rock sole roe fishery is closed, typically by early March.

The recommended seasonal apportionment of the halibut bycatch allowance for the pollock/Atka mackerel/''other species'' fishery category is based on the seasonal allowances of the Bering Sea pollock TAC recommended for the roe and non-roe seasons. Although most of the pollock harvested during the roe season will be taken with pelagic trawl gear and low halibut bycatch rates, any unused halibut bycatch mortality apportioned to the roe season will be available after the roe season.

The Council recommended three seasonal apportionments of the halibut bycatch allowance specified for the Pacific cod hook-and-line fishery. The intent of this recommendation was to provide amounts of halibut necessary to support the harvest of the seasonal apportionments of Pacific cod TAC listed in Table 4, as well as limit a hook-and-line fishery for Pacific cod during summer months when halibut bycatch rates are high. The third seasonal allowance of halibut bycatch mortality will become available September 15, even though the third seasonal allowance of Pacific cod specified for this fishery is available September 1 (Table 4). This means that directed fishing for the third seasonal allowance of Pacific cod by vessels using hook-and-line gear will be prohibited until September 15. The intent of the Council's recommendation was to limit fishing for Pacific cod by vessels using hook-and-line gear during summer months, including the first half of September, when halibut bycatch rates are relatively high. As authorized under § 679.21(e)(5)(iv), the Council further recommended that any unused portion of the first seasonal halibut bycatch allowance specified for the Pacific cod hook-and-line fishery be reapportioned to the third seasonal allowance to avoid opportunity for additional fishing for Pacific cod until September 15. The Council further recommended that any overage of a halibut bycatch allowance would be deducted from the remaining seasonal bycatch allowances specified for 1997 in amounts proportional to those remaining seasonal bycatch allowances.

TABLE 8.—FINAL SEASONAL APPORTIONMENTS OF THE 1997 PACIFIC HALIBUT BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

| | Pacific halibut seasonal |
|---|---|
| **Trawl Fisheries Bycatch Allowances (mt)** | |
| Yellowfin sole: | |
| Jan. 20–Mar. 31 | 210 |
| Apr. 01–May 10 | 210 |
| May 11–Aug. 14 | 100 |
| Aug. 15–Dec. 31 | 410 |
| Total | 930 |
| Rock sole/flathead sole/''other flatfish'': | |
| Jan. 20–Mar. 31 | 485 |
| Apr. 01–Jun. 30 | 130 |
| Jul. 01–Dec. 31 | 180 |
| Total | 795 |
| Rockfish: | |
| Jan. 20–Mar. 31 | 30 |
| Apr. 01–Jun. 30 | 45 |
| Jul. 01–Dec. 31 | 25 |
| Total | 100 |

TABLE 8.—FINAL SEASONAL APPORTIONMENTS OF THE 1997 PACIFIC HALIBUT BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES—Continued

| | Pacific halibut seasonal |
|---|---|
| Pacific cod: | |
| Jan. 20–Dec. 31 | 1,600 |
| Pollock/Atka mackerel/''other species'': | |
| Jan. 20–Apr. 15 | 300 |
| Apr. 16–Dec. 31 | 50 |
| Total | 350 |
| **Non-Trawl Gear** | |
| Pacific cod hook-and-line: [1] | |
| Jan. 01–Apr. 30 | 495 |
| May 01–Sep. 14 | 40 |
| Sep. 15–Dec. 31 | 305 |
| Total | 840 |
| Other nontrawl: | |
| Jan. 01–Dec. 31 | 60 |

[1] Any unused portion of the first seasonal halibut bycatch allowance specified for the Pacific cod hook-and-line fishery will be reapportioned to the third seasonal allowance. Any overage of a seasonal halibut bycatch allowance would be deducted from the remaining seasonal bycatch allowances specified for 1997 in amounts proportional to those remaining seasonal bycatch allowances.

For purposes of monitoring the fishery halibut bycatch mortality allowances and apportionments, the Regional Administrator will use observed halibut bycatch rates and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The Regional Administrator monitors the fishery's halibut bycatch mortality allowances using assumed mortality rates that are based on the best information available, including information contained in the final annual SAFE report.

With one exception, the Council recommended that the assumed halibut mortality rates developed by staff of the International Pacific Halibut Commission (IPHC) for the 1997 BSAI groundfish fisheries be adopted for purposes of monitoring halibut bycatch allowances established for the 1997

groundfish fisheries. The IPHC's assumed halibut mortality rates generally are based on an average of mortality rates determined from NMFS observer data collected during 1994 and 1995. Assumed Pacific halibut mortality rates for BSAI fisheries during 1997 are specified in Table 9.

For the Pacific cod hook-and-line gear fishery, the Council recommended an assumed rate of 11.5 percent (the rate used in 1996) until such time in 1997 that the IPHC completes an analysis of 1996 observer data on halibut mortality rates in this fishery. The rate recommended by IPHC staff based on 1994 and 1995 observer data was 14 percent. The Council's recommendation was made in response to public testimony that the 1996 mortality rates improved substantially from earlier years due to a voluntary information program developed by the Pacific cod hook-and-line gear fleet to reduce halibut bycatch discard mortality rates. The Council further recommended that once the IPHC's analysis of 1996 data is complete, NMFS publish a notice in the Federal Register to change the assumed mortality rate for the Pacific cod hook-and-line fishery to reflect the 1996 observed mortality rate. NMFS concurs with the Council's recommendation.

TABLE 9.—ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1997

| Fishery | Assumed mortality (percent) |
|---|---|
| Hook-and-line gear fisheries: | |
| Rockfish | 15 |
| Pacific cod | 11.5 |
| Greenland turbot | 11 |
| Sablefish | 29 |
| Trawl gear fisheries: | |
| Midwater pollock | 79 |
| Nonpelagic pollock | 76 |
| Yellowfin sole | 79 |
| Rock sole | 73 |
| Flathead sole | 65 |
| Other flatfish | 65 |
| Rockfish | 72 |
| Pacific cod | 68 |
| Atka mackerel | 73 |
| Arrowtooth flounder | 66 |
| Greenland turbot | 66 |
| Sablefish | 23 |
| Other species | 68 |
| Pot gear fisheries: | |
| Pacific cod | 10 |

Closures to Directed Fishing and Inseason Adjustment

Under § 679.20(d), if the Regional Administrator determines that the amount of a target species or ''other species'' category apportioned to a fishery or, with respect to pollock, to an inshore or offshore component allocation, is likely to be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group. If the Regional Administrator established a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district. Similarly, under §§ 679.21(e)(7) and 679.21(e)(8), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, Pacific herring, red king crab, or *C. bairdi* Tanner crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

The Regional Administrator has determined that the TAC amounts of pollock in the Bogoslof District, Pacific ocean perch in the Bering Sea subarea, shortraker/rougheye rockfish in the Aleutian Islands subarea, sharpchin/northern rockfish in the Aleutian Islands subarea, other red rockfish in the Bering Sea subarea and other rockfish in the Bering Sea and Aleutian Islands subareas will be necessary as incidental catch to support other anticipated groundfish fisheries. Therefore, NMFS is prohibiting directed fishing for these target species in the specified area identified in Table 10 to prevent exceeding the groundfish TACs specified in Table 1 of this document.

A Zone 1 red king crab bycatch allowance of zero crab is specified for the rockfish trawl fishery, which is defined at § 679.21(e)(3)(iv)(D). Similarly, the BSAI halibut bycatch allowance specified for the Greenland turbot/arrowtooth flounder/sablefish trawl fishery category, defined at § 679.21(e)(3)(iv)(C), is 0 mt. The BSAI herring bycatch allowance specified for the rock sole/flathead sole/other flatfish trawl fishery category, defined at § 679.21(e)(3)(iv)(B)(2), also is 0 mt. The Regional Administrator has determined, in accordance with §§ 679.21(e)(7)(ii), 679.21(e)(7)(iv), and § 679.21(e)(7)(v) that the red king crab bycatch allowance specified for the trawl rockfish fishery in Zone 1, the halibut bycatch allowance specified for the Greenland turbot/arrowtooth flounder/sablefish trawl fishery category, and the Pacific herring bycatch allowance specified for the rock sole/flathead sole/other flatfish trawl fishery category have been caught. Therefore, NMFS is prohibiting directed fishing for rockfish in Zone 1 by vessels using trawl gear; for Greenland turbot, arrowtooth flounder, and sablefish in the BSAI by vessels using trawl gear; and for rock sole, flathead sole, and other flatfish in the Herring Savings Area defined at § 679.2 (See Table 10.).

NMFS issues an inseason adjustment closing the RKCSS to directed fishing for groundfish by vessels using nonpelagic trawl gear. This action is necessary to prevent exceeding the 1997 red king crab bycatch allowance specified for the RKCSS. The groundfish fishery by vessels using trawl gear in the BSAI began January 20, 1997. Vessels fishing for groundfish with nonpelagic trawl gear in Zone 1 south of 56 degrees North latitude, the southern boundary of the red king crab savings area, experienced high bycatch rates of red king crab, taking an estimated 27,000 animals in three days. Historical data show that bycatch rates of red king crab by vessels fishing for groundfish with nonpelagic trawl gear increase with increasing latitude in the red king crab savings area. If groundfish were available to vessels using nonpelagic trawl gear in the RKCSS for a minimum time period, NMFS anticipates that effort by those vessels would be substantial, resulting in the allowance of 26,250 red king crab being exceeded. This allowance is not expected to sustain the fishery although it is the maximum amount allowed under § 679.21(e)(3)(ii)(B)(2).

In accordance with § 679.25(a)(2)(i)(B), NMFS has determined that the red king crab for the red king crab bycatch allowance specified for the RKCSS will not adequately provide for nonpelagic trawl gear fishing operations in the subarea. Therefore, in accordance with § 679.25(a)(1)(i) and (a)(2)(i), the Regional Administrator has determined that closing the RKCSS to directed fishing for groundfish by vessels using nonpelagic trawl gear is necessary to prevent exceeding the red king crab bycatch allowance specified for the subarea and is the least restrictive measure to achieve that purpose. Without this prohibition of fishing, red king crab bycatch in excess of the allowance specified for the RKCSS would occur.

Under authority of the Interim 1997 Specifications (61 FR 60044, November 26, 1996), NMFS closed directed fishing for atka mackerel in the Eastern Aleutian District and the Bering Sea Subarea of the BSAI effective 1200 hrs, A.l.t., February 4, 1997, through 2400 hrs, A.l.t., December 31, 1997 (62 FR 5781, February 7, 1997). The amount of TAC remaining under the final specifications of groundfish following closure under the interim specifications will be used as incidental catch in directed fishing for other species in the

Eastern Aleutian District and Bering Sea Subarea. In accordance with § 679.20(d)(1)(iii), the closure to directed fishing for atka mackerel in the Eastern Aleutian District and the Bering Sea Subarea of the BSAI will remain in effect through 2400 hrs, A.l.t., December 31, 1997.

The closures listed in Table 10 supersede the closures announced in the 1997 interim specifications (61 FR 60044, November 26, 1996 and corrected at 62 FR 2445, January 16, 1997). In accordance with § 679.20(d)(1)(iii), § 679.21(e)(7), and § 679.25(a)(1)(i) and (a)(2)(i), the closures listed in Table 10 will remain in effect through 2400 hrs, A.l.t., December 31, 1997. While these closure are in effect, the maximum retainable bycatch amounts at § 679.20(e) apply at any time during a fishing trip. Additional closures and restrictions may be found in existing regulations at 50 CFR part 679.

TABLE 10.—CLOSURES TO DIRECTED FISHING UNDER 1997 TACS [1]

| Fishery (All Gear): | Closed Area [2] |
|---|---|
| Pollock in Bogoslof District | Statistical Area 518. |
| Pacific ocean perch | Bering Sea subarea. |
| Other red rockfish [3] | Bering Sea subarea. |
| Shortraker/rougheye rockfish | Aleutian Islands subarea. |
| Sharpchin/northern rockfish | Aleutian Islands subarea. |
| Other rockfish [4] | BSAI. |
| Atka mackerel | Eastern Aleutian District and Bering Sea Subarea. |
| Fishery (Trawl only): | |
| Rockfish | Zone 1. |
| Greenland turbot, arrowtooth, sablefish | BSAI. |
| Rock sole, flathead sole and other flatfish | Herring Savings Area. |
| Groundfish (nonpelagic trawl gear) | RKCSS. |

[1] These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679.
[2] Refer to § 679.2 for definitions of areas, subareas, Bycatch Limitation Zone 1, and the Herring Savings Area, and to Figure 1 to Part 679 for a description of BSAI Statistical Areas. The red king crab savings subarea (RKCSS) is defined at § 679.21(e)(3)(ii)(B).
[3] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern.
[4] In the BSAI, "Other rockfish" includes *Sebastes* and *Sebastolobus* species except for Pacific ocean perch and the "other red rockfish" species.

Response to Comments

*Comment 1.* The draft environmental assessment prepared for the 1997 specifications provides an inadequate basis for a Finding of No Significant Impact. The environmental impact statement (EIS) prepared for the BSAI groundfish fishery was drafted 15 years ago. Since that time, the conduct of the fisheries has changed, new information regarding the affected groundfish species exists, and substantial and unanalyzed questions exist regarding the impact of the groundfish fisheries on the BSAI ecosystem. NMFS should prepare a supplement to the EIS which fully evaluates the potential impacts of the groundfish TACs on the BSAI ecosystem.

*Response.* NMFS acknowledges that the final EIS prepared for the BSAI groundfish fishery is 15 years old. Nonetheless, NMFS believes the final EA prepared for the 1997 BSAI groundfish specifications, as well as the documents incorporated by reference into the EA, adequately support a Finding of No Significant Impact (FONSI). The FONSI is based on the best available information contained in the SAFE report on the biological condition of groundfish stocks, the socioeconomic condition of the fishing industry, and consultation with the Council at its December 1996 meeting. For each species category, the Council recommended harvest amounts such that catches at or below these amounts would not result in overfishing as defined by the FMP. The Council's recommended final TACs for many groundfish species differ from the proposed TACs due to new information on status of stocks and/or changes in exploitation strategy. Each of the Council's recommended TACs for 1997 is equal to or less than the ABC for each species category. Therefore, NMFS finds that the recommended TACs are consistent with the biological condition of the groundfish stocks.

*Comment 2.* The draft EA does not adequately assess the impact of proposed 1997 fishing levels on the age class distribution of declining stocks of pollock in the eastern Bering Sea, on endangered Steller sea lions, or on the unlisted species also suffering population declines. The draft EA also neglects to address dramatic increases in catches of pollock and Atka mackerel in areas designated as critical foraging habitat for Steller sea lions, the increasing effort directed on spawning pollock in the winter months, and the geographic and temporal concentration of fishing in the areas of the BSAI where the greatest declines of sea lion, other marine mammals, and seabirds have occurred.

*Response.* The issues of concern identified in *Comment* 2 are addressed within the scope of the final EA, as well as in the documents incorporated by reference into the final EA. Efforts to identify relationships between the Alaska groundfish fisheries and Steller sea lions are ongoing, but any potential linkages remain unclear. Overlaps between Steller sea lion prey and harvested species have been identified, particularly with reference to pollock and Atka mackerel stocks. However, no data currently are available to suggest that the recommended ABCs for these or any other species will adversely impact the recovery of Steller sea lions or other listed species. Participants in the Alaskan groundfish fisheries are not expected to significantly alter their fishing practices, either spatially or temporally, as a result of the 1997 groundfish specifications nor operate in any manner that would predictably pose obvious impacts to Steller Sea lions. New information on the declining abundance of juvenile pollock in the eastern Bering Sea is not expected to influence the fishery during 1997, because fishing effort will continue to concentrate on older age classes that are spatially separate from juvenile aggregations. Available information on the relationship between pollock spawner and recruit biomass suggests that the remaining unharvested mature portion of the stock is above the level that would cause further reductions in pollock recruitment.

Classification

This action is authorized under 50 CFR part 679 and is exempt from review under E.O. 12866.

This action adopts final 1997 harvest specifications for the BSAI, implements associated management measures, releases reserves to certain species ITACs, and closes specified fisheries. Generally, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. In some cases, such as closures, action must be taken immediately to conserve fishery resources. In other cases, such as the apportionment of the nonspecified reserve to specified ITAC amounts, action must be taken immediately to convey a benefit to the industry in terms of providing the opportunity to plan for the full harvest of specified TAC amounts. Without the specified closures, prohibited species bycatch allowances will be exceeded, established TAC amounts will be overharvested, and retention of some groundfish species will become prohibited, which would disadvantage fishermen who could no longer retain bycatch amounts of these species. In some cases, the interim specifications in effect would be insufficient to allow directed fisheries to operate during a 30-day delayed effectiveness period, which would result in unnecessary closures and disruption within the fishing industry; in many of these cases, the final specifications will allow the fisheries to continue without interruption. The immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources and to convey a benefit to fishermen by providing an opportunity to harvest available TAC amounts. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA), finds good cause exists to waive the 30-day delayed effectiveness period under 5 U.S.C. 553(d)(3) with respect to such provisions. Comments on the apportionment of reserves will be received until February 27, 1997 (see **ADDRESSES**).

The AA under authority of 5 U.S.C. 553(b)(B) finds good cause that providing prior notice and an opportunity for public comment regarding the inseason adjustment closing the red king crab savings subarea of the BSAI is impracticable and contrary to the public interest. Similarly, under authority of 5 U.S.C. 553(d)(3), the AA finds good cause to waive the 30-day delay in effective date and immediate effectiveness is necessary to prevent exceeding the red king crab bycatch allowance specified for the RKCSS. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until February 27, 1997.

Pursuant to section 7 of the Endangered Species Act, NMFS and the U.S. Fish and Wildlife Service have determined that the groundfish fisheries operating under the 1997 BSAI TAC specifications are unlikely to jeopardize the continued existence or recovery of species listed as endangered or threatened or to adversely modify critical habitat of these species.

NMFS prepared an EA on the 1997 TAC specifications. The AA concluded that no significant impact on the environment will result from their implementation. A copy of the EA is available (see **ADDRESSES**).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final specification will not have a significant economic impact on a substantial number of small entities. The number of fixed gear and trawl catcher vessels expected to be operating as small entities in the Bering Sea and Aleutian Islands groundfish fishery is 356, excluding catcher/processor vessels. All these small entities will be affected by the harvest limits established in the 1997 specifications but changes from 1996 are relatively minor and are expected to be shared proportionally among participants. For this reason, the expected effects would not likely cause a reduction in gross revenues of more than 5 percent, increase compliance costs by more than 10 percent, or force small entities out of business.

The Alaska commercial fishing industry is accustomed to shifting effort among alternative species and management areas in response to changes in TAC between years and inseason closures. Such mobility is necessary to survive in the open access fishery. Therefore, the annual specification process for Alaska groundfish for 1997 would not have significant economic impact on a significant number of small entities. No comments were received regarding this regulatory flexibility act certification. Thus no regulatory flexibility analysis was prepared.

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

Dated: February 12, 1997.

Nancy Foster,

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–3952 Filed 2–12–97; 4:30 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 62, No. 32
Tuesday, February 18, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 96–NM–278–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires inspections to detect damage of the support brackets and clamps of the transfer pipe of the tail tank, and of the transfer pipe assembly; and replacement of damaged parts, or installation of a doubler, if necessary. This action would add a requirement to install a fuel transfer pipe of the tail tank, and to install support brackets and clamps of the fuel feed pipe of engine No. 2, which constitutes terminating action for the repetitive inspections. This action would also require, for certain airplanes, removal of a temporary protective doubler installed on the fuel pipe assembly. This action is prompted by reports of cracking of the support brackets in the refuel and fuel transfer lines of the tail fuel tank and damage to the nylon clamps and transfer pipe assembly. The actions specified by the proposed AD are intended to prevent such cracking and damage, which could result in further damage to the transfer pipe assembly and possible fuel leakage.

**DATES:** Comments must be received by March 28, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–278–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5262; fax (310) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–278–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–278–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

On May 1, 1996, the FAA issued AD 96–10–07, amendment 39–9612 (61 FR 21066, May 9, 1996), applicable to certain McDonnell Douglas Model MD–11 series airplanes, to require repetitive visual inspections for cracking, bending, or stress of the support brackets, and any damage to the clamps of the transfer pipe of the tail tank; and replacement of any damaged bracket or clamp with a serviceable part. That action also requires repetitive visual inspections for damage of the transfer pipe assembly of the tail tank; and installation of a doubler on the pipe assembly, or replacement of the pipe assembly with a serviceable assembly, if necessary. That action was prompted by reports of cracking of the support brackets in the refuel and fuel transfer lines of the tail fuel tank and damage to the nylon clamps and transfer pipe assembly; such damage is due to flexing of the brackets and subsequent contact of the transfer pipe assembly with adjacent structure. The requirements of that AD are intended to prevent such cracking and damage, which could result in further damage to the transfer pipe assembly and possible fuel leakage.

In the preamble to AD 96–10–07, the FAA indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

### Actions Since Issuance of Previous Rule

Since the issuance of that AD, McDonnell Douglas has developed a modification procedure that involves installing a fuel transfer pipe of the tail tank and installing additional support brackets and pipe clamps of the fuel feed pipe of engine No. 2. Installation of additional support brackets and pipe

clamps will positively address the unsafe condition by minimizing the possibility of fuel pipe damage due to flexing of the brackets and subsequent contact of the transfer pipe assembly with adjacent structure.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD11–28–089, dated October 24, 1996, which describes procedures for removal of certain clamps and the temporary protective doubler on the fuel pipe assembly, if those parts have been installed previously. The service bulletin also describes procedures for installing a fuel transfer pipe of the tail tank, and installing support brackets and pipe clamps of the fuel feed pipe of engine No. 2, which eliminates the need for repetitive inspections to detect damage of the support brackets and clamps.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–10–07. It would continue to require visual inspections to detect cracking, bending, or stress of the support brackets and damage to the nylon clamps of the transfer pipe of the tail tank. It also would continue to require repetitive inspections to detect damage of the support brackets and clamps.

However, for certain airplanes, this new proposed AD would add a requirement to remove certain clamps and the temporary protective doubler on the fuel pipe assembly. It also would require installation of a fuel transfer pipe of the tail tank, and installation of support brackets and pipe clamps of the fuel feed pipe of engine No. 2, which constitutes terminating action for the repetitive inspections. These actions would be required to be accomplished in accordance with McDonnell Douglas Service Bulletin MD11–28–089, as described previously.

**Cost Impact**

There are approximately 145 Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 40 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 96–10–07 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $4,800, or $120 per airplane, per inspection cycle.

The new actions that are proposed in this AD action would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $691 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $42,040, or $1,051 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–9612 (61 FR 21066, May 9, 1996), and by adding a new airworthiness directive (AD), to read as follows:

**McDonnell Douglas:** Docket 96–NM–278–AD. Supersedes AD 96–10–07, Amendment 39–9612.

*Applicability:* Model MD–11 series airplanes; as listed in McDonnell Douglas Service Bulletin MD11–28–089, dated October 24, 1996; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent cracking of the support brackets in the refuel and fuel transfer lines of the tail fuel tank and damage to the nylon clamps and transfer pipe assembly, which, if not corrected, could result in further damage to the transfer pipe assembly and possible fuel leakage, accomplish the following:

**Restatement of Requirements of AD 96–10–07**

(a) For Group 1 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–28A083, dated March 13, 1996: Within 90 days after May 24, 1996 (the effective date of AD 96–10–07, amendment 39–9612), accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Paragraph 3. of the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD11–28A083, dated March 13, 1996, or McDonnell Douglas Service Bulletin MD11–28A083, Revision 1, dated May 5, 1996.

(1) Perform a visual inspection for cracking, bending, or stress of the support brackets and damage to the nylon clamps of the transfer pipe of the tail tank, in accordance with the alert service bulletin. If any damaged bracket or clamp is detected, prior to further flight, replace it with a serviceable part in accordance with the alert service bulletin.

(2) Perform a visual inspection for chafing and/or denting of the transfer pipe assembly

of the tail tank, in accordance with the alert service bulletin.

(i) *Condition 1.* If no damage to the fuel pipe assembly is detected, accomplish the requirements of either paragraph (a)(2)(i)(A) or (a)(2)(i)(B) of this AD at the times specified in that paragraph.

(A) Condition 1, Option 1. Thereafter, repeat the visual inspections required by paragraph (a) of this AD at intervals not to exceed 600 flight hours; or

(B) Condition 1, Option 2. Install a temporary doubler on the fuel pipe assembly in accordance with the alert service bulletin and, thereafter, repeat the visual inspections required by paragraph (a) of this AD at intervals not to exceed 15 months.

(ii) *Condition 2.* If damage is found that is within the limits specified by the alert service bulletin, prior to further flight, install a temporary doubler on the fuel pipe assembly. Thereafter, repeat the visual inspections required by paragraph (a) of this AD at intervals not to exceed 15 months.

(iii) *Condition 3.* If damage is found that is outside the limits specified by the alert service bulletin, prior to further flight, replace the fuel pipe assembly with a new or serviceable assembly; and accomplish the requirements of either paragraph (a)(2)(iii)(A) or (a)(2)(iii)(B) of this AD at the time specified in that paragraph.

(A) Condition 3, Option 1. Thereafter, repeat the visual inspections required by paragraph (a) of this AD at intervals not to exceed 600 flight hours; or

(B) Condition 3, Option 2. Install a temporary doubler on the fuel pipe assembly; and repeat the visual inspections required by paragraph (a) of this AD, thereafter, at intervals not to exceed 15 months. (Replacement of the fuel pipe assembly with a serviceable pipe assembly that has been repaired by welding a doubler in the area of potential damage, does not require the installation of a temporary doubler.)

**New Requirements of this AD**

(b) Within 24 months after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD, as applicable.

(1) For airplanes on which the temporary protective doubler has been installed on the fuel pipe assembly in accordance with McDonnell Douglas Alert Service Bulletin MD11–28A083, dated March 13, 1996: Remove the clamps and the temporary protective doubler installed on the fuel transfer pipe, in accordance with McDonnell Douglas Service Bulletin MD11–28–089, dated October 24, 1996. Prior to further flight following accomplishment of the removal, accomplish the requirements of paragraph (a)(2) of this AD.

(2) For all airplanes: Install the fuel transfer pipe of the tail tank and support brackets and clamps of the fuel feed pipe of engine No. 2, in accordance with McDonnell Douglas Service Bulletin MD11–28–089, dated October 24, 1996. Accomplishment of this installation constitutes terminating action for the requirements of this AD.

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance that concern the use of an alternate material in lieu of the specified temporary doubler, which were approved previously in accordance with AD 96–10–07, amendment 39–9612, are *not* considered to be approved as alternative methods of compliance with this AD.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 10, 1997.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–3842 Filed 2–14–97; 8:45 am]

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## 14 CFR Part 39

**[Docket No. 96–NM–283–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require a one-time inspection to detect riding, chafing, or damage of the wire bundles adjacent to the disconnect panel bracket of the observer's station. The proposed AD also would require repair or replacement of damaged wires with new or serviceable wires; installation of anti-chafing sleeving on the wire bundles, if necessary; and installation of grommet along the entire upper aft edge of the disconnect panel bracket. This proposal is prompted by a report indicating that the circuit breakers tripped on a Model MD–11 series airplane due to inflight arcing behind the avionics circuit breaker panel as a result of chafing of the wire bundles adjacent to the disconnect panel bracket assembly. The actions specified by the proposed AD are intended to detect and correct such chafing, which could result in a fire in the wire bundles and smoke in the cockpit.

**DATES:** Comments must be received by March 28, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–283–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5347; fax (310) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–283–AD.'' The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–283–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The FAA received a report indicating that the circuit breakers tripped on a Model MD–11 series airplane during flight due to arcing behind the avionics circuit breaker panel. Investigation revealed that the arcing was caused by chafing of the wire bundles adjacent to the disconnect panel bracket assembly. Such chafing, if not detected and corrected, could result in a fire in the wire bundles and smoke in the cockpit.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD11–24–111, dated December 3, 1996. The service bulletin describes procedures for a one-time inspection to detect riding, chafing, or damage of the wire bundles adjacent to the disconnect panel bracket of the observer's station. The service bulletin also describes procedures for repair or replacement of damaged wires with new or serviceable wires; installation of anti-chafing sleeving on the wire bundles, if necessary; and installation of grommet along the entire upper aft edge of the disconnect panel bracket. Accomplishment of the installations will minimize potential arcing, wiring damage, and resultant loss of aircraft systems.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection to detect riding, chafing, or damage of the wire bundles adjacent to the disconnect panel bracket of the observer's station. The proposed AD also would require repair or replacement of damaged wires with new or serviceable wires; installation of anti-chafing sleeving on the wire bundles, if necessary; and installation of grommet along the entire upper aft edge of the disconnect panel bracket. The actions would be required to be accomplished in accordance with the service bulletin described previously.

**Cost Impact**

There are approximately 86 McDonnell Douglas Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost for required parts would be negligible. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,100, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**MCDONNELL DOUGLAS:** Docket 96–NM–283–AD.

*Applicability:* Model MD–11 series airplanes, as listed in McDonnell Douglas Service Bulletin MD11–24–111, dated December 3, 1996; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct chafing of the wire bundles adjacent to the disconnect panel bracket assembly and consequent inflight arcing behind the avionics circuit breaker, which could result in a fire in the wire bundles and smoke in the cockpit, accomplish the following:

(a) Within 6 months after the effective date of this AD: Perform a one-time inspection to detect riding, chafing, or damage of the wire bundles adjacent to the disconnect panel bracket of the observer's station, in accordance with McDonnell Douglas Service Bulletin MD11–24–111, dated December 3, 1996.

(1) Condition 1. If any riding or chafing is found, and if any damage is found: Prior to further flight, repair or replace any damaged wires with new or serviceable wires; install anti-chafing sleeving on the wire bundles; and install a grommet along the entire upper aft edge of the disconnect panel bracket; in accordance with the service bulletin.

(2) Condition 2. If any riding or chafing is found, but no damage is found: Prior to further flight, install anti-chafing sleeving on the wire bundles, and install a grommet along the entire upper aft edge of the

disconnect panel bracket, in accordance with the service bulletin.

(3) Condition 3. If no riding, chafing, or damage is found: Prior to further flight, install a protective grommet along the entire upper aft edge of the disconnect panel bracket in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 10, 1997.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–3841 Filed 2–14–97; 8:45 am]

BILLING CODE 4910–13–U

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## 14 CFR Part 39

**[Docket No. 96–NM–64–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes Equipped with Pratt & Whitney Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes. This proposal would require flow checks of the hydraulic pump drain system to ensure that the system is not clogged, and correction of any discrepancy. Additionally, the proposed AD would require replacement of the existing seal of the accessory gearbox with a new, improved seal assembly; this replacement would terminate the requirement for repetitive flow checks. This proposal is prompted by reports indicating that hydraulic fluid had contaminated the engine oil system as a result of failure of the seal of the hydraulic pump shaft. The actions specified by the proposed AD are intended to prevent clogging of the hydraulic pump drain system, which could cause failure of the seal of the hydraulic pump shaft and subsequent contamination of the engine accessory gearbox oil; this condition could result in an in-flight engine shutdown.

**DATES:** Comments must be received by March 28, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–64–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–64–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–64–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A310 and A300–600 series airplanes. The DGAC advises that it has received reports of engine oil contamination on both of these models of airplanes. Investigation revealed that the contamination was due to failure of the seal of the green hydraulic pump shaft as a result of clogging of the hydraulic pump drain system. The seal is insufficient to handle the increase in the backflow pressure when the hydraulic pump drain system is clogged. Failure of the seal of the green hydraulic pump shaft, if not corrected, could permit contamination of the engine accessory gearbox oil, and result in an in-flight engine shutdown.

### Explanation of Relevant Service Information

Airbus has issued the following service bulletins which describe procedures for performing repetitive flow checks of the hydraulic pump drain system to ensure that the system is not clogged, and correction of any discrepancy.

1. For Model A310 series airplanes: Airbus Service Bulletin A310–72–2022, dated February 16, 1993 (for airplanes on which Pratt & Whitney JT9D–7R4D1 and 7R4E1 engines are installed); and Airbus Service Bulletin A310–72–2023, Revision 1, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW4152 and PW 4156A engines are installed).

2. For Model A300–600 series airplanes: Airbus Service Bulletin A300–72–6018, Revision 1, dated December 22, 1993 (for airplanes on which Pratt & Whitney JT9D–7R4H1 engines are installed); and Airbus Service Bulletin A300–72–6019, Revision 1, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW4158 engines are installed).

Additionally, Airbus has issued the following service bulletins which describe procedures to replace the existing carbon seal of the accessory gearbox with a new, improved seal assembly that is capable of withstanding a higher backflow pressure. This new seal assembly will prevent hydraulic fluid leakage into the gearbox, and will eliminate the need to perform repetitive flow checks.

1. For Model A300–600 series airplanes: Airbus Service Bulletin A300–72–6014, dated March 15, 1993 (for airplanes on which Pratt & Whitney PW JT9D–7R4H1 engines are installed); and Airbus Service Bulletin A300–72–6015, Revision 2, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW4158 engines are installed).

2. For Model A310 series airplanes: Airbus Service Bulletin A310–72–2018, Revision 2, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW JT9D–7R4D1 and -7R4E1 engines are installed); and Airbus Service Bulletin A310–72–2019, Revision 2, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW4152 and PW 4156A engines are installed).

The DGAC classified these service bulletins and previous editions of these service bulletins as mandatory and issued French airworthiness directive 92–231–136(B)R2, dated October 13, 1993, in order to assure the continued airworthiness of these airplanes in France.

**FAA's Conclusions**

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive flow checks of the hydraulic pump drain system to ensure that the system is not clogged, and correction of any discrepancy. Additionally, the proposed AD would require replacement of the existing seal of the accessory gearbox with a new, improved seal assembly. This replacement, when accomplished, would provide terminating action for the repetitive flow checks. The actions would be required to be accomplished in accordance with the service bulletins described previously.

**Cost Impact**

The FAA estimates that 3 Airbus Model A300–600 and A310 series airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 3 work hours per airplane to accomplish the proposed one-time inspection, at an average labor rate of $60 per work hour. It would take approximately 10 work hours per airplane to accomplish the proposed terminating modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,500 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,840, or $2,280 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus:** Docket 96–NM–64–AD.

*Applicability:* Model A300B4–620, –622, –622R, and A300C4–620; and Model A310–221, –222, –322, –324, and –325 series airplanes; equipped with Pratt & Whitney turbofan engines; on which Airbus Modification 10399 or 10400 has not been accomplished; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent clogging of the hydraulic pump drain system, which could cause failure of the seal of the hydraulic pump shaft and subsequent contamination of the engine accessory gearbox oil, and could result in an in-flight engine shutdown, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a flow check of the hydraulic pump drain system to ensure that it is not clogged and, prior to further flight, correct any discrepancies, in accordance with either paragraph (a)(1) or (a)(2) of this AD, as applicable. Repeat the flow check, thereafter, at intervals not to exceed 500 flight hours until the modification required by paragraph (b) of this AD is accomplished.

(1) For Model A310 series airplanes: Perform the flow checks and correct discrepancies in accordance with Airbus Service Bulletin A310–72–2022, dated February 16, 1993 (for airplanes on which Pratt & Whitney JT9D–7R4D1 and –7R4E1

engines are installed); or Airbus Service Bulletin A310–72–2023, Revision 1, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW4152 and PW4156A engines are installed); as applicable.

**Note 2:** Flow checks accomplished prior to the effective date of this AD in accordance with the original issuance of Airbus Service Bulletin A310–72–2023 are considered acceptable for compliance with the applicable action specified in this AD.

(2) For Model A300–600 series airplanes: Perform the flow checks and correct discrepancies in accordance with Airbus Service Bulletin A300–72–6018, Revision 1, dated December 22, 1993 (for airplanes on which Pratt & Whitney JT9D–7R4H1 engines are installed); or Airbus Service Bulletin A300–72–6019, Revision 1, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW4158 engines are installed); as applicable.

**Note 3:** Flow checks accomplished prior to the effective date of this AD in accordance with the original issuance of Airbus Service Bulletin A300–72–6018 or Airbus Service Bulletin A300–72–6019 are considered acceptable for compliance with the applicable action specified in this AD.

(b) Within 12 months after the effective date of this AD, replace (on both engines) the existing seal of the green hydraulic system gearbox with a new, improved seal assembly in accordance with either paragraph (b)(1) or (b)(2) of this AD, as applicable. Accomplishment of this replacement terminates the repetitive flow check requirements for this AD.

(1) For Model A310 series airplanes: Accomplish the replacement in accordance with Airbus Service Bulletin A310–72–2018, Revision 2, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW JT9D–7R4D1 and –7R4E1 engines are installed); or Airbus Service Bulletin A310–72–2019, Revision 2, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW4152 and PW4156A engines are installed); as applicable.

**Note 4:** Replacement of the existing seal on the green hydraulic system gearbox with a new, improved seal assembly accomplished prior to the effective date of this AD, in accordance with the original issuance or Revision 1 of Airbus Service Bulletin A310–72–2019, or with the original issuance or Revision 1 of Airbus Service A310–72–2018, is considered acceptable for compliance with the applicable action specified in this AD.

(2) Model A300–600 series airplanes: Accomplish the replacement in accordance with Airbus Service Bulletin A300–72–6014, dated March 15, 1993 (for airplanes on which Pratt & Whitney PW JT9D–7R4H1 engines are installed); or Airbus Service Bulletin A300–72–6015, dated March 15, 1993 (for airplanes on which Pratt & Whitney PW4158 engines are installed); as applicable.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

**Note 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 10, 1997.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–3840 Filed 2–14–97; 8:45 am]

BILLING CODE 4910–13–U

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 230

**[Release No. 33–7388; File Number S7–6–97]**

**RIN 3235–AH14**

## Definition of ''Prepared by or on Behalf of the Issuer'' for Purposes of Determining if an Offering Document is Subject to State Regulation.

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The National Securities Markets Improvements Act of 1996 mandates that the Securities and Exchange Commission (''Commission'') adopt a definition of the phrase ''prepared by or on behalf of the issuer'' found in newly revised Section 18 of the Securities Act of 1933. Today, the Commission proposes such a definition.

**DATES:** Comments should be received on or before March 20, 1997.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–6–96; this file number should be included in the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web Site (http://www.sec.gov).

**FOR FURTHER INFORMATION CONTACT:** James R. Budge, Division of Corporation Finance, at (202) 942–2950, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Commission proposes adding Rule 146[1] under the Securities Act of 1933 (''Securities Act'' or ''the Act'').[2] The Rule would define the term ''prepared by or on behalf of the issuer,'' as that term is used in newly revised Section 18 of the Act.[3]

### I. Background and Proposed Definition

On October 11, 1996, President Clinton signed into law the National Securities Markets Improvement Act of 1996.[4] One significant goal of this legislation, embodied in revised Section 18 of the Act, is to reduce duplicative and unnecessary regulatory requirements resulting from the dual system of federal and state securities regulation. The statute reallocates regulatory responsibility relating to securities offerings between the federal and state governments based on the nature of the security or offering. Among other things, it preempts state laws requiring or with respect to registration or qualification of ''covered securities'' as defined in the Act.[5] It also prohibits states from directly or indirectly prohibiting, limiting or imposing any conditions on the use of any offering document for a covered security if the offering document is ''prepared by or on behalf of the issuer.''[6]

The statute requires the Commission to define by rule the phrase ''prepared by or on behalf of the issuer,'' as used in connection with the prohibition on state regulation of offering documents for covered securities.[7] The Commission today proposes a definition of this term.

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[1] The proposed rule would be codified at 17 CFR 230.146.

[2] 15 U.S.C. 77a *et seq.*

[3] 15 U.S.C. 77r.

[4] Public Law 104–290, 110 Stat. 3416 (1996).

[5] The term ''covered security'' is defined in new section 18(b) [15 U.S.C. 77r(b)].

[6] The term ''offering document'' is defined in new section 18(d)(1) [15 U.S.C. 77r(d)(1)], as follows:

(1) Offering Document.—The term ''offering document''—

(A) has the meaning given the term ''prospectus'' in section 2(10), but without regard to the provisions of subparagraphs (A) and (B) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

[7] New Section 18(d)(2) requires the Commission to adopt this definition not later than six months after the section's enactment.

The Commission believes that the phrase is intended to cover offering documents prepared with the issuer's knowledge and consent. Thus, the proposed definition would cover offering documents authorized by the issuer and prepared by specified persons. Conversely, documents that are prepared and circulated without issuer authorization would not be covered.

Specifically, as proposed, if the issuer authorizes the offering document's production and the document is prepared by a director, officer, general partner, employee, affiliate, underwriter, attorney, accountant or agent of the issuer, it would be ''prepared by or on behalf of the issuer.'' [8] The proposed definition also would include authorized documents prepared by representatives or agents of these persons.[9]

Comment is requested as to whether the definition should be broadened or narrowed by adding persons to or eliminating persons from the list; specific justification for additions or deletions should be provided. Should the list include specific examples of persons, such as employees or attorneys as proposed, or is it sufficient to state simply that the person be an agent or representative of the issuer? The second approach would eliminate the need for paragraph (a) of the proposed definition. As proposed, the definition does not include offering documents prepared by persons who do not have some formal connection to the issuer. Should the definition be expanded to include offering documents approved by the issuer but prepared by a person who does not have a managerial, employment or other agency relationship with the issuer? The proposed definition also would encompass only those offering documents prepared with the authorization of the issuer. Should such authorization be implied if the document is prepared by certain individuals, such as underwriters? If implied authorization is believed appropriate for some persons, commenters are asked to identify the specific parties and explain why it would be appropriate to imply consent in those cases.

[8] In the case of a registered investment company, an agent of the issuer would generally include the company's investment adviser or any other agent that performs administrative functions on behalf of the company.

[9] As provided by statute, the proposed definition would be applicable only to Section 18 of the Securities Act.

## II. Submission of Comments

Interested persons should submit comment letters in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–6–96. This file number should be included on the subject line if E-mail is used. Comments received will be available for inspection and copying in the Commission's public reference room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

## III. Cost-Benefit Analysis

Commenters should address the costs and benefits of the proposed definition of ''prepared by or on behalf of the issuer,'' and to provide any available support for such views, in order to aid the Commission in its own evaluation of its costs and benefits. The Commission believes that issuers will not experience changes to their compliance costs as a result of this rulemaking. For purposes of 5 U.S.C. 804(2), the Commission also requests information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide data supporting their views.

## IV. Summary of Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed definition. The analysis notes that the proposal relates to a Congressional mandate to define the term ''prepared by or on behalf of the issuer'' for purposes of Section 18 of the Act and describes the reasons for and purposes of the proposed definition.

As discussed more fully in the analysis, the proposals may affect persons that are small entities, as defined by the Commission's rules. It is not expected that significant changes to reporting, recordkeeping and compliance burdens would result from the proposal, inasmuch as the substantive effects of the changes to Section 18 are controlled primarily by the terms of the legislation, and not by the terms of this proposed definition. The purpose of the definition is to give guidance with regard to the meaning of a statutory term.

There are no current federal rules that duplicate, overlap or conflict with the proposed definition.

Several possible significant alternatives to the proposal were considered, including, among others, establishing different requirements for small entities or exempting them from all or part of the proposed definition. As discussed more fully in the analysis, this rulemaking does not lend itself to separate treatment for small businesses. The definition is purposefully crafted in broad terms to encompass small entities together with other issuers. No public interest would be served by a definition that would exclude small entities from enjoying the benefits of state preemption.

Written comments are encouraged with respect to any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the analysis may be obtained by contacting James R. Budge, Division of Corporation Finance, Mail Stop 7–8, 450 Fifth Street, NW., Washington, DC 20549.

## V. Statutory Basis

Rule 146 is being proposed pursuant to Sections 18 and 19 of the Securities Act.

## List of Subjects in M CFR Part 230

Reporting and recordkeeping requirements, Securities.

## Text of the Proposal

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 is revised to read in part as follows:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. By adding § 230.146, to read as follows:

### § 230.146 Definition of ''prepared by or on behalf of the issuer'' for purposes of Section 18 of the Act.

*Prepared by or on behalf of the issuer.* An offering document (as defined in Section 18(d)(1) of the Act [15 U.S.C. 77r(d)(1)]) shall be deemed ''prepared by or on behalf of the issuer'' for purposes of Section 18 of the Act, if the issuer authorizes its production and if it has been prepared by:

(a) A director, officer, general partner, employee, affiliate, underwriter,

attorney, accountant or agent of the issuer; or

(b) An agent or representative of any person specified in paragraph (a) of this section.

Dated: February 11, 1997.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–3845 Filed 2–14–97; 8:45 am]

**BILLING CODE 8010–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 20

**[REG–209830–96]**

**RIN 1545–AU27**

### Estate and Gift Tax Marital Deduction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

**SUMMARY:** In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the estate tax marital deduction to conform the Estate Tax Regulations to recent court decisions. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Comments must be received by May 19, 1997. Outlines of topics to be discussed at the public hearing scheduled for June 3, 1997, at 10 a.m. must be received by May 13, 1997.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG–209830–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209830–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax____ regs/comments.html. The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Susan B. Hurwitz, (202) 622–3090; concerning submissions and the hearing, Evangelista Lee, (202) 622–7190 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

#### Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Estate Tax Regulations (26 CFR part 20) relating to sections 2044 and 2056. The temporary regulations conform the estate tax marital deduction regulations to recent court decisions in *Estate of Clayton* v. *Commissioner,* 976 F.2d 1486 (5th Cir. 1992), *rev'g* 97 T.C. 327 (1991); *Estate of Robertson* v. *Commissioner,* 15 F.3d 779 (8th Cir. 1994), *rev'g* 98 T.C. 678 (1992); *Estate of Spencer* v. *Commissioner,* 43 F.3d 226 (6th Cir. 1995), *rev'g* T.C. Memo. 1992-579; and *Estate of Clack* v. *Commissioner,* 106 T.C. 131 (1996).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely (in the manner described in **ADDRESSES**) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 3, 1997, at 10 a.m. in the Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit comments by May 19, 1997 and submit an outline of the topics to be discussed and the time to be devoted to each topic by May 13, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed.

Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of the proposed regulations is Susan B. Hurwitz, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 20 is proposed to be amended as follows:

### PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

**Paragraph 1.** The authority citation for part 20 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2**. In § 20.2044–1, paragraph (e) *Example 8* is added to read as follows:

**§ 20.2044–1 Certain property for which marital deduction was previously allowed.**

[The text of paragraph (e) *Example 8* as proposed is the same as the text of § 20.2044–1T(e) *Example 8* published elsewhere in this issue of the **Federal Register].**

**Par. 3**. Section 20.2056(b)–7 is amended to read as follows:

**§ 20.2056(b)–7 Election with respect to life estate for surviving spouse.**

[The text of paragraphs (d)(3), and (h) *Example 6* is the same as the text of § 20.2056(b)–7T(d)(3) (ii), and (h) *Example 6* published elsewhere in this issue of the **Federal Register**].

**Par. 4**. Section 20.2056(b)–10 is revised to read as follows:

**§ 20.2056(b)–10 Effective dates.**

Except as specifically provided in §§ 20.2056(b)–5(c)(3)(ii) and (iii), 20.2056(b)–7T(d)(3), 20.2056(b)–7(e)(5), and 20.2056(b)–8(b), the provisions of §§ 20.2056(b)–5(c), 20.2056(b)–7, 20.2056(b)–8, and 20.2056(b)–9 are effective with respect to estates of decedents dying after March 1, 1994. With respect to decedents dying on or before March 1, 1994, the executor of the decedent's estate may rely on any reasonable interpretation of the statutory provisions. For these purposes, the provisions of §§ 20.2056(b)–5(c), 20.2056(b)–7, 20.2056(b)–8, and 20.2056(b)–9 (as well as project LR–211–76 (1984–1 C.B. 598), see § 601.601(d)(2)(ii)(b) of this chapter), are considered a reasonable interpretation of the statutory provisions.

**Margaret Milner Richardson,**

*Commissioner of Internal Revenue.*

[FR Doc. 97–3399 Filed 2–14–97; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Parts 206 and 208

**RIN 1010–AC09**

## Establishing Oil Value for Royalty due on Federal Leases, and on Sale of Federal Royalty Oil

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Proposed rule; notice of extension of public comment period.

**SUMMARY:** The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on a Notice of proposed rule, which was published in the **Federal Register** on January 24, 1997, (62 FR 3742). The proposed rule would amend the regulations governing the valuation for royalty purposes of oil produced from Federal leases. In response to requests for additional time, MMS will extend the comment period from March 25, 1997, to April 28, 1997.

**DATE:** Comments must be submitted on or before April 28, 1997.

**ADDRESSES:** Written comments, suggestions, or objections regarding this proposed amendment should be sent to the following addresses.

For comments sent via the U.S. Postal Service use: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165.

For comments via courier or overnight delivery service use: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, MS 3101, Building 85, Denver Federal Center, Room A–212, Denver, Colorado 80225–0165.

**FOR FURTHER INFORMATION CONTACT:** David S. Guzy, Chief, Rules and Publications Staff, phone (303) 231–3432, FAX (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov.

Dated: February 10, 1997.

**Lucy R. Querques,**

*Associate Director for Royalty Management.*

[FR Doc. 97–3908 Filed 2–14–97; 8:45 am]

BILLING CODE 4310–MR–P

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 914

**[SPATS No. IN–136–FOR; Amendment No. 95–4]**

## Indiana Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Indiana regulatory program (hereinafter the ''Indiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Indiana's regulation pertaining to repair or compensation for material damage resulting from subsidence caused by underground coal mining operations and to replacement of water supplies adversely impacted by coal mining operations. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

**DATES:** Written comment must be received by 4:00 p.m., e.s.t., March 20, 1997. If requested, a public hearing on the proposed amendment will be held on March 16, 1997. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t., on March 5, 1997.

**ADDRESSES:** Written comment and requests to speak at the hearing should be mailed or hand delivered to Ronald F. Griffin, Acting Director, Indianapolis Field Office, at the address listed below.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Ronald F. Griffin, Acting Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521, Telephone: (317) 226–6700.

Indiana Department of Natural Resources, 402 West Washington Street, Room C256, Indianapolis, Indiana 46204, Telephone: (317) 232–1547.

**FOR FURTHER INFORMATION CONTACT:** Ronald F. Griffin, Acting Director, Indianapolis Field Office, Telephone: (317) 226–6700.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

### II. Description of the Proposed Amendment

By letter dated January 14, 1997 (Administrative Record No. IND–1551), the Indiana Department of Natural Resources (IDNR) submitted to proposed amendment to its program pursuant to SMCRA. Indiana submitted the proposed amendment in response to a May 20, 1996, letter (Administrative Record No. IND–1540) that OSM sent to Indiana in accordance with 30 CFR 732.17(c). Indiana proposes to amend the following regulations of the Indiana Administrative Code (IAC) pertaining to repair or compensation for material damage resulting from subsidence and to replacement of water supplies.

*1. 310 IAC 12–0.5 Definitions*

a. Indiana proposes to add a definition at 310 IAC 12–0.5–39.5 for

the term ''Drinking, domestic or residential water supply.''

b. Indiana proposes to add a definition at 310 IAC 12–0.5–72.1 for the term ''Material damage.''

c. Indiana proposes to add a definition at 310 IAC 12–0.5–75.5 for the term ''Non-commercial building.''

d. Indiana proposes to add a definition at 310 IAC 12–0.5–77.5 for the term ''Occupied residential dwelling and structures related thereto.''

e. Indiana proposes to add a definition at 310 IAC 12–0.5–107.5 for the term ''Replacement of water supply.''

*2. 310 IAC 12–3–81 Underground Mining Permit Applications; Reclamation Plan; Protection of Hydrologic Balance*

Indiana proposes to amend 310 IAC 12–3–81(c) by redesignating the introductory paragraph as subsection (c)(1) and by adding new subsection (c)(2). New subsection (c)(2) requires the PHC determination to include findings on ''whether the underground mining activities may result in contamination, diminution, or interruption of a well or spring in existence at the time the permit application is submitted and used for domestic, drinking,or residential purposes within the permit or adjacent areas.'' Existing subsections (c)(1) through (c)(3) were redesignated subsections (d)(1) through (d)(3), and existing subsections (d) and (e) were redesignated subsections (e) and (f), respectively.

*3. 310 IAC 12–3–87.1 Underground Mining Permit Applications; Reclamation Plan; Subsidence Control Plan*

Indiana proposes extensive revisions to this section. The substantive revisions are discussed below.

a. Subsections (a)(1) through (a)(3) require an application to include a map, a narrative, and a pre-subsidence survey indicating the location, type, and condition of structures and renewable resource lands that subsidence may materially damage or diminish in value and of drinking, domestic, and residential water supplies that subsidence may contaminate, diminish, or interrupt. Subsection (a)(3) also requires the applicant to notify property owners of the effect that denial of access for purposes of conducting a pre-subsidence survey will have on their rights, to pay for any technical assessment or engineering evaluation needed, and to provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the director of IDNR.

b. Subsection (b) contains revised requirements for a subsidence control plan. A new introductory paragraph provides that no further information need be provided in the application under this section if the survey conducted under subsection (a) shows that no structures, drinking, domestic, or residential water supplies, or renewable resource lands exist or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands and no contamination, diminution, or interruption of such water supplies would occur as a result of mine subsidence. The director of IDNR must agree with the conclusion of the survey. A subsidence control plan is required if the survey identifies the existence of structures, renewable resource lands, or water supplies and if subsidence could cause material damage to the identified structures and renewable resource lands diminution in value or foreseeable use, or contamination, diminution, or interruption of the protected water supplies.

c. Subsection (b)(7) requires a description of the methods that will be taken to minimize damage to non-commercial buildings and occupied residential dwellings and related structures; or a submittal of the written consent of the owner of the structure or facility that minimization measures need not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage to these structures or facilities exceed the anticipated cost of repair for areas where planned subsidence is projected.

d. Subsection (b)(8) requires a description of the measures to be taken to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to protected land and structures.

*4. 310 IAC 12–5–94 Underground Mining; Hydrologic Balance; Water Rights and Replacement*

Indiana proposes to revise 310 IAC 12–5–94 to require the permittee to replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities if the affected well or spring was in existence before the date the director of IDNR received the permit application. The baseline hydrologic information and geologic information concerning baseline hydrologic conditions required in the permit application will be used to determine the impact of mining activities upon water supply.

*5. 310 IAC 12–5–130.1 Underground Mining; Subsidence Control; General Requirements*

Indiana proposes extensive revisions to this section. The substantive revisions are discussed below.

a. Indiana proposes to revise subsection (a) by redesignating the existing provisions (1)(A) and (1)(B) and by adding two new provisions. Subsection (a)(2) provides that if planned subsidence is used, the permittee must minimize material damage to noncommercial buildings and occupied residential dwellings and related structures to the extent technologically and economically feasible. Except this is not required if he has the written consent of the owners or unless the anticipated damage would constitute a threat to health or safety, the costs would exceed the anticipated costs of repair. Subsection (a)(3) provides that the standard method of room-and-pillar mining is not prohibited.

b. Indiana proposes to revise subsection (c)(2) by deleting the existing language and adding new language. New subsection (c)(2) requires the permittee to repair or compensate the owner for subsidence-related material damage to non-commercial buildings or occupied residential dwellings that existed at the time of mining. It also specifies the responsibilities of the permittee under both the repair and compensation options.

c. Indiana proposes to add new subsection (c)(3) to provide for repair or compensation for subsidence-related material damage to structures or facilities not protected by subdivision (2).

d. Indiana proposes to add new subsection (c)(4)(A) to provide that if damage to non-commercial buildings or occupied residential dwellings and related structures occurs as a result of earth movement within the area determined by projecting a specified angle of draw from underground mine workings to the surface, a rebuttable presumption exists that the permittee caused the damage. The presumption will normally apply to a 30-degree angle of draw. The director of IDNR may apply the presumption to a different angle of draw under specified circumstances.

e. Indiana proposes to add new subsection (c)(4)(B) to provide that the permittee or permit applicant may request that the presumption apply to a different site-specific angle of draw based on a site-specific geotechnical

analysis of the potential surface impact of the mining operation that demonstrates that the proposed angle of draw has a more reasonable basis than the one established in the Indiana program.

f. Indiana proposes to add new subsection (c)(4)(C) to provide that no rebuttable presumption will exist if the permittee is denied access to the land or property for the purpose of conducting a pre-subsidence survey.

g. Indiana proposes to add new subsection (c)(4)(D) to provide for a rebuttal of presumption under specified circumstances.

h. Indiana proposes to add new subsection (c)(4)(E) to provide that all relevant and reasonably available information will be considered in determining whether damage to protected structures was caused by subsidence.

i. Indiana proposes to add new subsection (c)(5) to require additional performance bond if subsidence-related material damage to protected land, structures, or facilities occurs and if contamination, diminution, or interruption to water supplies occur. No additional bond is required if repairs, compensation or replacement is completed within 90 days of the occurrence of damage. Indiana may extend the 90-day time frame under specified circumstances.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

### *Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

### *Public Hearing*

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t., on March 5, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

### *Public Meeting*

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

## IV. Procedural Determinations

### *Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

### *Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

### *National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

### *Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

## List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 6, 1997.

**Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 97–3897 Filed 2–14–97; 8:45 am]

BILLING CODE 4310–05–M

**30 CFR Part 914**

**[SPATS No. IN–138–FOR; Amendment No. 95–3 II]**

## Indiana Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** OSM is announcing receipt of a proposed amendment to the Indiana regulatory program (hereinafter the ''Indiana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Indiana Administrative Code (IAC) regulations pertaining to Indiana's small operator assistance program. The amendment is intended to revise the Indiana regulations to be consistent with the corresponding Federal regulations and to incorporate changes desired by the State.

**DATES:** Written comments must be received by 4:00 p.m., e.s.t., March 20, 1997. If requested, a public hearing on the proposed amendment will be held on March 16, 1997. Requests to speak at the hearing must be received by 4:00 p.m., e.s.t., on March 5, 1997.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Ronald F. Griffin, Acting Director, Indianapolis Field Office, at the address listed below.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Ronald F. Griffin, Acting Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521, Telephone: (317) 226–6700.

Indiana Department of Natural Resources, 402 West Washington Street, Room C256, Indianapolis, Indiana 46204, Telephone: (317) 232–1547.

**FOR FURTHER INFORMATION CONTACT:** Ronald F. Griffin, Acting Director, Indianapolis Field Office, Telephone: (317) 226–6700.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. Background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 914.10, 914.15, and 914.16.

### II. Description of the Proposed Amendment

By letter dated January 13, 1997 (Administrative Record No. IND–1550), the Indiana Department of Natural Resources submitted to OSM proposed State program amendment number 95–3 II pursuant to SMCRA. Indiana submitted the proposed amendment at its own initiative. The proposed amendment revises Indiana's regulations pertaining to the small operator assistance program at 310 IAC 12–3–130, definitions; 310 IAC 12–3–131, eligibility for assistance; 310 IAC 12–3–132, filing for assistance; 310 IAC 12–3–132.5, application approval and notice; 310 IAC 12–3–133, program services and data requirements; 310 IAC 12–3–134.1, qualified laboratories; 310 IAC 12–3–134.5, assistance funding; and 310 IAC 12–3–135, applicant liability. Specifically, Indiana proposes the following revisions.

*1. 310 IAC 12–3–130 Small Operator Assistance; Definitions*

Indiana proposes to revise the definitions for the terms ''program administrator'' at 310 IAC 12–3–130(4) and ''qualified laboratory'' at 310 IAC 12–3–130(5).

*2. 310 IAC 12–3–131 Small Operator Assistance; Eligibility for Assistance*

a. Indiana proposes to revise 310 IAC 12–3–131 by deleting the existing language in subsections (2)(A) and (2)(D); by redesignating subsections (2)(A), (2)(C) as (2)(B), and (2)(E) as (2)(D); and by adding new subsection (2)(C).

New subsection (2)(C) requires that production from all coal produced by operations owned by persons who directly or indirectly control the applicant by reason of ownership, direction of management, or in any manner be attributed to the applicant.

b. Indiana proposes to move the substantive provision in subsection (3) to new subsection (4) with minor language changes. New subsection (3) requires that the applicant not be restricted in any manner from receiving a permit.

*3. 310 IAC 12–3–132 Operator Assistance; Filing for Assistance*

Indiana is proposing minor language changes to clarify the existing requirements for the information to be included in an application for assistance.

*4. 310 IAC 12–3–132.5 Small Operator Assistance; Application Approval and Notice*

a. Indiana proposes to add new subsection (c) to allow data collection and analysis to proceed concurrently with the development of mining and reclamation plans by the operator.

b. Indiana proposes to add new subsection (d) to require that data collected under its small operator assistance program be made available to the public and that the program administrator develop procedures for interstate coordination and exchange of data.

*5. 310 IAC 12–3–133 Small Operator Assistance; Program Services and Data Requirements*

Indiana is proposing minor language changes in this section to clarify the program services available for eligible operators who request assistance.

*6. 310 IAC 12–3–134.1 Small Operator Assistance; Qualified Laboratories*

Indiana proposes to delete section 134 and to add its substantive provisions to section 134.1. Minor language changes are also proposed.

*7. 310 IAC 134.5 Small Operator Assistance; Assistance Funding*

Indiana proposes to add a new section at 310 IAC 134.5 concerning Indiana's use of funds authorized for the small operator assistance program. Subsection (a) requires that the funds be used to provide the services specified in section 133 and not be used to cover administrative expenses. Subsection (b) requires the program administrator to establish a formula for allocating funds to provide services for eligible small operators if the available funds are less than those required to provide the services pursuant to this rule.

*8. 310 IAC 12–3–135 Small Operator Assistance; Applicant Liability*

Indiana proposes minor language changes in this section to clarify the requirements for an applicant to reimburse funds received for services

rendered under the small operator assistance program.

### III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t., on March 5, 1997. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

*Public Meeting*

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posed at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the Administrative Record.

### IV. Procedural Determinations

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 720(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

### List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 6, 1997.

**Brent Wahlquist,**

*Regional Director, Mid-Continent Regional Coordinating Center.*

[FR Doc. 97–3898 Filed 2–14–97; 8:45 am]

BILLING CODE 4310–05–M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[IN 68–1–7308b; FRL–5678–4]**

## Approval and Promulgation of Implementation Plan; Indiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State implementation plan (SIP) revision submitted by the State of Indiana for the purpose of incorporating minor changes to existing regulations and accommodating recent revisions to the SIP by adding and updating regulations. The EPA made a finding of completeness in a letter dated November 25, 1994. This revision affects definitions in the General Provisions of the Indiana SIP (326 IAC 1–1, 1–2, 1–6), and the Permit Review Rules (326 IAC 2–1). In the final rules section of this **Federal Register**, the EPA is approving these actions as a direct final rule without prior proposal because EPA views these as noncontroversial actions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives

adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this notice. Any parties interested in commenting on this notice should do so at this time.

**DATES:** Comments must be received in writing on or before March 20, 1997.

**ADDRESSES:** Comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch, United States Environmental Protection Agency, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

Copies of the State's submittal and EPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Alvin Choi, Environmental Engineer, Permits and Grants Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3507.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: December 12, 1996.

**Valdas V. Adamkus,**

*Regional Administrator.*

[FR Doc. 97–3863 Filed 2–14–97; 8:45 am]

**BILLING CODE 6560–50–P**

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## 40 CFR Part 52

**[TN–178–1–9707b; FRL–5683–1]**

## Approval and Promulgation of Implementation Plans; Hamilton County, Tennessee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Tennessee on behalf of the Chattanooga-Hamilton County Air Pollution Control Bureau (CHCAPCB) for the purpose of establishing a Federally enforceable state operating permit (FESOP) program. In order to extend the Federal enforceability of CHCAPCB's FESOP to hazardous air pollutants (HAP), EPA is also proposing approval of the CHCAPCB's FESOP regulations pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA).

In the Final Rules Section of this **Federal Register**, EPA is approving CHCAPCB's SIP revision as a direct final rule without prior proposal because the Agency views this as noncontroversial revision amendments and anticipates no adverse comments. A detailed rationale for the approvals is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this approval action. Any parties interested in commenting on this action should do so at this time.

**DATES:** To be considered, comments must be received by March 20, 1997.

**ADDRESSES:** Written comments should be addressed to: Kelly Fortin, Air & Radiation Technology Branch, Air, Pesticides & Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 100 Alabama Street SW., Atlanta, Georgia 30303.

Copies of the material submitted by the State of Tennessee on behalf of the CHCAPCB may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4, Air & Radiation Technology Branch, Atlanta Federal Center, 100 Alabama Street SW., Atlanta, Georgia 30303.

Tennessee Department of the Environment and Conservation, L&C Annex, 401 Church Street, Nashville, Tennessee, 37243–1531.

Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407–2495.

**FOR FURTHER INFORMATION CONTACT:** Kelly Fortin, Air & Radiation Technology Branch, Air, Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, 100 Alabama Street SW., Atlanta, Georgia 30303, 404–562–9117. Reference file TN178–1.

**SUPPLEMENTARY INFORMATION:** For additional information, refer to the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 23, 1997.

**A. Stanley Meiburg,**

*Acting Regional Administrator.*

[FR Doc. 97–3866 Filed 2–14–97; 8:45 am]

**BILLING CODE 6560–50–P**

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## 40 CFR Parts 52 and 81

**[OH78–2; FRL–5689–N]**

## Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio

**AGENCY:** Environmental Protection Agency (USEPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Ohio Environmental Protection Agency (OEPA) has requested the redesignation of the Ohio portion of the Cincinnati-Hamilton area consisting of Hamilton, Clermont, Butler, and Warren Counties from moderate nonattainment to attainment for ozone. The request was received on November 15, 1994. USEPA proposed to approve the redesignation request on May 5, 1995. However, during July of 1995 an ozone monitor in the area recorded another exceedance of the ozone standard resulting in a violation of the standard. As a result of the violation the area is no longer attaining the ozone air quality standard and USEPA is proposing to disapprove the redesignation request for the area because it has not met all of the requirements for redesignation specified under section 107(d)(3)(E), of the Clean Air Act.

The Cincinnati-Hamilton moderate nonattainment area also includes the Kentucky counties of Boone, Campbell, and Kenton. On September 27, 1996, USEPA disapproved the redesignation request for the Kentucky portion of the Cincinnati-Hamilton moderate ozone nonattainment area.

**DATES:** Comments on this redesignation and on the proposed USEPA action must be received by March 20, 1997.

**ADDRESSES:** Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other information are available for inspection during normal business

hours at the following location: Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** William Jones, Environmental Scientist, Air Programs Branch, Regulation Development Section (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6058.

**SUPPLEMENTARY INFORMATION:**

## I. Background Summary

The OEPA has requested the redesignation of the Ohio portion of the Cincinnati-Hamilton Area (consisting of the counties of Hamilton, Butler, Clermont and Warren) from nonattainment to attainment for ozone.

Under Section 107(d) of the 1977 amended Clean Air Act (CAA), the USEPA promulgated the ozone attainment status for each geographic area of the country. All counties in the Cincinnati-Hamilton OH–KY area were designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pursuant to Section 107(d)(4)(A), Butler, Clermont, Hamilton, and Warren Counties, along with the Kentucky counties of Boone, Campbell, and Kenton were designated as the Cincinnati-Hamilton moderate ozone nonattainment area, as a result of monitored violations of the ozone National Ambient Air Quality Standard (NAAQS) during the 1986–1988 time frame (56 FR 56694, November 6, 1991). A review of the redesignation request for the Ohio portion of the Cincinnati-Hamilton area was provided in a proposed rulemaking dated May 5, 1995 (60 FR 22337). To the extent that any comments received on the May 5, 1995, proposed rulemaking are relevant to this proposed rulemaking, they will be addressed in any final rulemaking on this action.

## II. Redesignation Review Criteria

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, Section 107(d)(3)(E) provides for redesignation if: (i) The Administrator determines that the area has attained the National Ambient Air Quality Standard (NAAQS); (ii) The Administrator has fully approved the applicable implementation plan for the area under Section 110(k); (iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable state implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of Section 175(A); and (v) The State containing such area has met all requirements applicable to the area under Section 110 and Part D.

The USEPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992). The primary memorandum providing further guidance with respect to section 107(d)(3)(E) of the amended Act is dated September 4, 1992, and issued by the Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Calcagni Memorandum).

## III. Analysis of Cincinnati Area Redesignation Request

For ozone, an area may be considered attaining the NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and Appendix H, based on three complete, consecutive calendar years of quality assured monitoring data. A violation of the NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 at a monitoring site. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is 0.125 parts per million (ppm) or higher. The data should be collected and quality-assured in accordance with 40 CFR 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

The OEPA submitted ozone monitoring data for the April through October ozone season from 1976 to 1994. In addition USEPA has reviewed the most recent ambient air quality monitoring data that is recorded in USEPA's AIRS. The table below summarizes the air quality data from 1994–1996.

TABLE 1.—PEAK 1-HOUR OZONE CONCENTRATIONS IN THE CINCINNATI-HAMILTON AREA 1994 TO 1996

| Site | County | Year | Exceedances measured | Expected exceedances |
|---|---|---|---|---|
| Oxford | Butler | 1994 | 0 | 0.0 |
| Middletown | Butler | 1994 | 0 | 0.0 |
| Middletown | Butler | 1995 | 2 | 2.0 |
| Middletown | Butler | 1996 | 1 | 1.0 |
| Hamilton | Butler | 1994 | 0 | 0.0 |
| Hamilton | Butler | 1995 | 1 | 1.0 |
| Hamilton | Butler | 1996 | 0 | 0.0 |
| 4430 SR 222 | Clermont | 1994 | 1 | 1.0 |
| 4430 SR 222 | Clermont | 1995 | 1 | 1.0 |
| 4430 SR 222 | Clermont | 1996 | 0 | 0.0 |
| 11590 Grooms Rd | Hamilton | 1994 | 0 | 0.0 |
| 11590 Grooms Rd | Hamilton | 1995 | 0 | 0.0 |
| 11590 Grooms Rd | Hamilton | 1996 | 0 | 0.0 |
| 6950 Ripple Road | Hamilton | 1994 | 0 | 0.0 |
| 6950 Ripple Road | Hamilton | 1995 | 1 | 1.0 |
| 6950 Ripple Road | Hamilton | 1996 | 0 | 0.0 |
| Cincinnati | Hamilton | 1994 | 0 | 0.0 |
| Cincinnati | Hamilton | 1995 | 1 | 1.0 |
| Cincinnati | Hamilton | 1996 | 0 | 0.0 |
| Lebanon | Warren | 1994 | 2 | 2.0 |
| Lebanon | Warren | 1995 | 2 | 2.0 |

TABLE 1.—PEAK 1-HOUR OZONE CONCENTRATIONS IN THE CINCINNATI-HAMILTON AREA 1994 TO 1996—Continued

| Site | County | Year | Exceedances measured | Expected exceedances |
|---|---|---|---|---|
| Lebanon | Warren | 1996 | 0 | 0.0 |
| KY 338 | Boone | 1994 | 0 | 0.0 |
| KY 338 | Boone | 1995 | 0 | 0.0 |
| KY 338 | Boone | 1996 | 0 | 0.0 |
| Dayton | Campbell | 1994 | 0 | 0.0 |
| Dayton | Campbell | 1995 | 0 | 0.0 |
| Dayton | Campbell | 1996 | 1 | 1.0 |
| Covington | Kenton | 1994 | 0 | 0.0 |
| Covington | Kenton | 1995 | 1 | 1.0 |
| Covington | Kenton | 1996 | 1 | 1.0 |

To demonstrate monitored attainment with the standard, the OEPA submitted ozone air quality data for the years 1992 through 1994. This data has been quality assured and is recorded in AIRS. During the 1994 to 1996 time period, the Lebanon monitor recorded a total of 4.0 expected exceedances. This averages out to 1.33 average expected exceedances per year and as a result is a violation of the ozone standard.

All five of the redesignation criteria given under section 107(d)(3)(E) of the CAA must be satisfied in order for USEPA to redesignate an area from nonattainment to attainment. Under the first criterion, the Administrator of USEPA is prohibited from redesignating an area to attainment when that area has not attained the NAAQS. Furthermore, section 107(d)(1)(A) defines a nonattainment area as ''any area that does not meet'' NAAQS and an attainment area as ''any area * * * that meets the'' NAAQS. Consequently, if a violation occurs prior to USEPA's final action, the area is no longer in attainment and USEPA cannot redesignate the area to attainment status because, at the time of that action, the area would not meet the definition of an attainment area under section 107.

At the time of the OEPA's redesignation submittal in 1994, the Cincinnati-Hamilton moderate nonattainment area appeared to have attained the NAAQS, based on air quality data monitored from 1992 through 1994. However, during USEPA's review of the public comments received on the proposal, ambient air quality data indicated that the area had registered a violation of the ozone NAAQS in 1995. This ambient data has been quality assured according to established procedures for validating such monitoring data. As a result, the Cincinnati-Hamilton area does not meet the statutory criterion for redesignation to attainment of the ozone NAAQS found in section 107(d)(3)(E)(i) of the CAA.

USEPA notes that it has previously disapproved redesignation requests on the basis of violations occurring after the submission of the redesignation request. In particular, USEPA has already disapproved the redesignation request for the Kentucky portion of the Cincinnati-Hamilton nonattainment area on the basis of the same violations that are the basis for this proposal. See 61 FR 50718 (September 27, 1996). See also 61 FR 19193 (May 1, 1996) (disapproval of redesignation request for Pittsburgh, Pennsylvania).

The maintenance plan State Implementation Plan (SIP) revision is not approvable because its demonstration is based on a level of ozone precursor emissions in the ambient air thought to represent an inventory of emissions that would provide for attainment and maintenance. That underlying basis of the maintenance plan's demonstration is no longer valid due to the violation of the NAAQS that occurred during the 1995 ozone season, a season in which the emissions inventory was at or below the level of the emissions inventory in the base year.

## IV. Proposed Rulemaking Action and Solicitation of Public Comment

The Cincinnati-Hamilton area does not meet the redesignation and maintenance plan requirements of the CAA. Therefore, the USEPA is proposing disapproval of the maintenance plan and the redesignation of the Ohio portion of the Cincinnati moderate ozone nonattainment area, consisting of the counties of Butler, Warren, Clermont, and Hamilton, to attainment for ozone.

Public comments are solicited on USEPA's proposed rulemaking action. Public comments received by March 20, 1997 will be considered in the development of USEPA's final rulemaking action. To the extent that any comments received on the May 5, 1995, proposed approval are relevant to this proposed rulemaking, they will be addressed in any final rulemaking on this action.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

USEPA's disapproval of the State request under Section 110 and subchapter I, Part D of the CAA would not affect any existing requirements applicable to small entities. Any pre-existing federal requirements would remain in place after this disapproval. Moreover, USEPA's disapproval of the submittal would not impose any new Federal requirements. Furthermore, the direct affects of the designation status of a nonattainment area fall on a State, not a small entity. Therefore, USEPA certifies that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove

existing requirements and impose any new Federal requirements.

USEPA's denial of the State's redesignation request under section 107(d)(3)(E) of the CAA does not affect any existing requirements applicable to small entities nor does it impose new requirements. The area retains its current designation status and continues to be subject to the same statutory requirements. To the extent that the area must adopt regulations, based on its nonattainment status, USEPA will review the effect of those actions on small entities at the time the State submits those regulations. Therefore, the Administrator certifies that any disapproval of the redesignation request will not affect a substantial number of small entities.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate. Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 110 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. USEPA has examined whether the rules being disapproved by this action would impose any new requirements. Since such sources are already subject to these regulations under State law, no new requirements would be imposed by a disapproval. Moreover, as this action would merely leave the area with its current designation, it imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this action, and therefore there will be no significant impact on a substantial number of small entities.

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

*40 CFR Part 81*

Environmental protection, Air pollution control.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: February 6, 1997.

**Michelle D. Jordan,**

*Acting Regional Administrator.*

[FR Doc. 97–3925 Filed 2–14–97; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 80

**[FRL–5689–3]**

## Regulations of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to the Phoenix, Arizona Moderate Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Under section 211(k)(6) of the Clean Air Act, as amended (Act), the Administrator of EPA shall require the sale of reformulated gasoline in an ozone nonattainment area classified as Marginal, Moderate, Serious, or Severe upon the application of the governor of the state in which the nonattainment area is located. This action proposes to extend the prohibition set forth in section 211(k)(5) against the sale of conventional (*i.e.*, non-reformulated) gasoline to the Phoenix, Arizona moderate ozone nonattainment area. The Agency is proposing the implementation date of the prohibition described herein to take effect on the effective date of this rule or June 1, 1997, whichever is later, for all persons other than retailers and wholesale purchaser-consumers (*i.e.*, refiners, importers, and distributors). For retailers and wholesale purchaser-consumers, EPA is proposing the implementation of the prohibition described herein to take effect 30 days after the effective date of this rule, or July 1, 1997, whichever is later. As of the implementation date for retailers and wholesale purchaser-consumers, the Phoenix ozone nonattainment area will be a covered area for all purposes in the federal RFG program.

**DATES:** If a public hearing is held on today's proposal, comments must be received by April 10, 1997. If a hearing is not held, comments must be received by March 20, 1997. Please direct all correspondence to the address shown below. The Agency will hold a public hearing on today's proposal if one is requested by February 25, 1997. If a public hearing is held, it will take place on March 11, 1997. To request a hearing, or to find out if and where a hearing will be held, please call Janice Raburn at (202) 233–9000.

**ADDRESSES:** Comments should be submitted (in duplicate, if possible) to Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. A copy should also be sent to Janice Raburn at U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460. A copy should also be sent to EPA Region IX, 75 Hawthorne Street, AIR–2, 17th Floor, San Francisco, CA 94105.

Materials relevant to this notice have been placed in Docket A–97–02. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material. An identical docket is also located in EPA's Region IX office in Docket A–AZ–97. The docket is located at 75 Hawthorne Street, AIR–2, 17th Floor, San Francisco, California 94105. Documents may be inspected from 9:00 a.m. to noon and from 1:00—4:00 p.m. A reasonable fee may be charged for copying docket material.

**FOR FURTHER INFORMATION CONTACT:** Janice Raburn or Paul Argyropoulos at U.S. Environmental Protection Agency Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233–9000.

**SUPPLEMENTARY INFORMATION:** A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS) and on the Office of Mobile Sources' World Wide Web cite, http://www.epa.gov/OMSWWW. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS

(K) Rulemaking and Reporting

(3) Fuels

(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: OPTOUT.ZIP. To download this file, type the instructions below and

transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp
Selection or <CR> to exit: D
filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

*Regulated entities.* Entities potentially regulated by this action are those which produce, supply or distribute motor gasoline. Regulated categories and entities include:

| Category | Examples of regulated entities |
|---|---|
| Industry .... | Petroleum refiners, motor gasoline distributors and retailers. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated (''conventional gasoline'') in the nine worst ozone nonattainment areas beginning January 1, 1995. Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline (RFG) program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values during the period 1987 though 1989.[1] Under section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the RFG program. EPA published final regulations for the RFG program on February 16, 1994. See 59 FR 7716.

Any other ozone nonattainment area classified as Marginal, Moderate, Serious, or Severe may be included in the program at the request of the Governor of the state in which the area is located. Section 211(k)(6)(A) provides that upon the application of a Governor, EPA shall apply the prohibition against selling conventional gasoline in any area requested by the Governor which has been classified under subpart 2 of Part D of Title I of the act as a Marginal, Moderate, Serious or Severe ozone nonattainment area. Subparagraph 211(k)(6)(A) further provides that EPA is to apply the prohibition as of the date the Administrator ''deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later.'' In some cases the effective date may be extended for such an area as provided in section 211(k)(6)(B) based on a determination by EPA that there is ''insufficient domestic capacity to produce'' RFG. Finally, EPA is to publish a governor's application in the **Federal Register**.

## II. The Governor's Request

EPA received an application from the Honorable Fife Symington, Governor of the State of Arizona, for the Phoenix moderate ozone nonattainment area to be included in the reformulated gasoline program. The Governor's letter is set out in full below.

January 17, 1997.

Ms. Carol Browner, Administrator,
*U.S. Environmental Protection Agency, 401 M. Street, S.W. (1101) Washington, D.C. 20460.*

Dear Ms. Browner: The purpose of this letter is to request, under section 211(k)(6) of the Clean Air Act and 40 CFR § 81.303, that the U.S. E.P.A. extend the requirement for reformulated gasoline (RFG) to the Phoenix Ozone Nonattainment Area beginning June 1, 1997. This ''opt-in'' request is made in accordance with the guidance provided by your agency in letters to me of December 31, 1996 and January 13, 1997.

Furthermore, I am requesting waivers related to summertime Reid Vapor Pressure (RVP) and wintertime oxygenated fuels:

—From June 1 through September 30 of each year, that the current State standard of 7.0 pounds per square inch (psi) RVP be enforced in the Phoenix Ozone Nonattainment Area; and

—That the U.S.E.P.A. preserve existing State standards for oxygenated gasoline blends.

These unique gasoline standards were submitted by Arizona in the 1993 ozone and carbon monoxide State Implementation Plan revisions required under the Clean Air Act, but no action was taken on our waiver request. I urge EPA to expeditiously approve these waivers in accordance with § 211(c)(4)(C) of the Act.

As you know, Arizona has made a good faith effort to implement its ozone nonattainment plan in compliance with all of the requirements of the Clean Air Act. Regardless, a significant proportion of the emissions reductions included in this plan were not realized due to the difficulties the State has experienced in attempting to fully implement the federal enhanced vehicular inspection and maintenance program. This problem, and continued violations of the ozone standard in Maricopa County have motivated the State to voluntarily develop and submit an ozone plan, which will include a variety of enforceable control programs designed to reduce pollution and bring about attainment of the ozone standard by 1999. Reformulated gasoline is critical to the success of this plan, and will probably provide the largest pollution reduction of any single control program contemplated in this plan.

The State will continue to evaluate gasoline formulations and other strategies for reducing ozone, carbon monoxide and particulate pollution, and may determine that another gasoline formulation provides equivalent or better emissions reductions, and is more cost-effective or represents a better overall solution to our pollution problems in the long term. In such case, the State will submit a complete opt-out request by December 31, 1997, or take other appropriate action, as described in the December 31, 1996 and January 13, 1997 letters previously mentioned.

I appreciate the prompt assistance that your Region IX staff provided on this issue. Thank you for your attention to this matter.

Sincerely,

s/Fife Symington

*Governor.*

FS:sae
cc: Felicia Marcus, EPA, Region IX, Russell F. Rhoades, Arizona Department of Environmental Quality, John Hays, Arizona Department of Weights and Measures

## III. Action

Pursuant to the governor's letter and the provisions of section 211(k)(6), EPA is proposing to apply the prohibitions of subsection 211(k)(5) to the Phoenix, Arizona ozone nonattainment area as of the effective date of this rule, or June 1, 1997 whichever is later, for all persons other than retailers and wholesale purchaser-consumers. This date applies to the refinery level and all other points in the distribution system other than the retail level. For retailers and wholesale

[1] Applying these criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee.

purchaser-consumers, EPA is proposing to apply the prohibitions of subsection 211(k)(5) to the Phoenix, Arizona ozone nonattainment area 30 days after the effective date for this rule, or July 1, 1997, whichever is later. As of the implementation date for retailers and wholesale purchaser-consumers, this area will be treated as a covered area for all purposes of the federal RFG program.

The application of the prohibition of section 211(k)(5) to the Phoenix ozone nonattainment area could take effect no later than January 17, 1998 under section 211(k)(6)(A), which stipulates that the effective program date must be no ''later than January 1, 1995 or 1 year after [the Governor's] application is received, whichever is later.'' For the Phoenix nonattainment area, EPA could establish an effective date for the start of the RFG program anytime up to this date. EPA considers that January 17, 1998 would be the latest possible effective date, since EPA expects there to be sufficient domestic capacity to produce RFG and therefore has no current reason to extend the effective date beyond one year after January 17, 1998. EPA believes that there is adequate domestic capability to support the current demand for RFG nationwide as well as the addition of the Phoenix area.

Like the federal volatility program, the RFG program includes seasonal requirements. Summertime RFG must meet certain VOC control requirements to reduce emissions of VOCs, an ozone precursor. Under the RFG program, there are two compliance dates for VOC-controlled RFG. At the refinery level, and all other points in the distribution system other than the retail level, compliance with RFG VOC-control requirements is required from May 1 to September 15. At the retail level (service stations and wholesale purchaser-consumers), compliance is required from June 1 to September 15. See 40 CFR 80.78 (a)(1)(v). Pipeline requirements and demands for RFG from the supply industry drive refineries to establish their own internal compliance date earlier than May so that they can then assure that terminals are capable of meeting the RFG VOC-control requirements by May 1. Based on past success with this implementation strategy, EPA proposes to stagger the implementation dates for the Phoenix opt-in to the RFG program.

The Governor's request seeks an implementation date of June 1 for the RFG program in the Phoenix area. However, pursuant to its discretion to set an effective date under § 211(k)(6), EPA is proposing two implementation dates. For all persons other than retailers and wholesale purchaser-consumers (*i.e.*, refiners, importers, and distributors), EPA is proposing the implementation to take effect on the effective date of this rule, or June 1, 1997, whichever is later. For retailers and wholesale purchaser-consumers, EPA is proposing the implementation to take effect 30 days after the effective date of this rule or July 1, 1997, whichever is later. EPA believes these proposed implementation dates achieve a reasonable balance between requiring the earliest possible start date and providing adequate lead time for industry to prepare for program implementation. These dates are consistent with the state's request that EPA require that the RFG program begin in the Phoenix area as early as possible in the high ozone season, which begins June 1. These dates would provide environmental benefits by allowing Phoenix to achieve VOC reduction benefits for some of the 1997 VOC-controlled season. EPA believes these dates provide adequate lead time for the distribution industry to set up storage and sales agreements to ensure supply. EPA asks for comment on whether retailers and wholesale purchaser-consumers believe they could comply with federal RFG in less than 30 days from the effective date set for persons other than retailers and wholesale purchaser-consumers.

## IV. Public Participation and Effective Date

The Agency is publishing this action both as a proposed rulemaking and as a direct final rule because it views setting the effective date for the addition of the Phoenix ozone nonattainment area to the federal RFG program as non-controversial and anticipates no adverse or critical comments. The Agency will hold a public hearing on today's proposal if one is requested by February 25, 1997.

The Governor of Arizona established in May 1996 an Air Quality Strategies Task Force to develop a report describing long- and short-term strategies that would contribute to attainment of the federal national ambient air quality standards for ozone, carbon monoxide and particulates. In July 1996, this task force recommended establishment of a Fuels Subcommittee to evaluate potential short-term and long-term fuels options for the Phoenix ozone nonattainment area. The Fuels Subcommittee was composed of representatives of a diverse mixture of interests including gasoline-related industries, public health organizations, and both in-county and out-of-county interests. Several members of the refining industry supported the opt into the federal RFG program for Phoenix for the onset of the 1997 VOC control season. The subcommittee submitted its final report to the Air Quality Strategies Task Force on November 26, 1996.

Section 211(k)(6) states that, ''[u]pon the application of the Governor of a State, the Administrator shall apply the prohibition'' against the sale of conventional gasoline in any area of the State classified as Marginal, Moderate, Serious, or Severe for ozone. Although § 211(k)(6) provides EPA discretion to establish the effective date for this prohibition to apply to such areas, and allows EPA to consider whether there is sufficient domestic capacity to produce RFG in establishing the effective date, EPA does not have discretion to deny a Governor's request. Therefore, the scope of this action is limited to setting an effective date for Phoenix's opt-in to the RFG program, and not to decide whether Phoenix should in fact opt in. For this reason, EPA is only soliciting comments addressing the implementation date and is not soliciting comments that support or oppose Phoenix participating in the program.

## V. Environmental Impact

The federal RFG program provides reductions in ozone-forming VOC emissions, oxides of nitrogen ($NO_X$), and air toxics. Reductions in VOCs are environmentally significant because of the associated reductions in ozone formation and in secondary formation of particulate matter, with the associated improvements in human health and welfare. Exposure to ground-level ozone (or smog) can cause respiratory problems, chest pain, and coughing and may worsen bronchitis, emphysema, and asthma. Animal studies suggest that long-term exposure (months to years) to ozone can damage lung tissue and may lead to chronic respiratory illness. Reductions in emissions of toxic air pollutants are environmentally important because they carry significant benefits for human health and welfare primarily by reducing the number of cancer cases each year.

The Arizona Governor's Task Force estimates that if federal RFG is required to be sold in Phoenix, VOC emissions will be be cut by more than nine tons/day. In addition, all vehicles would have improved emissions and the area would also get reductions in toxic emissions.

## VI. Statutory Authority

The Statutory authority for the action proposed today is granted to EPA by sections 211(c) and (k) and 301 of the

Clean Air Act, as amended; 42 U.S.C. 7545(c) and (k) and 7601.

**VII. Regulatory Flexibility**

For the following reasons, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. In promulgating the RFG and anti-dumping regulations, the Agency analyzed the impact of the regulations on small businesses. The Agency concluded that the regulations may possibly have some economic effect on a substantial number of small refiners, but that the regulations may not significantly affect other small entities, such as gasoline blenders, terminal operators, service stations and ethanol blenders. *See* 59 FR 7810–7811 (February 16, 1994). As stated in the preamble to the final RFG/anti-dumping rule, exempting small refiners from the RFG regulations would result in the failure of meeting CAA standards. 59 FR 7810. However, since most small refiners are located in the mountain states or in California, which has its own RFG program, the vast majority of small refiners are unaffected by the federal RFG requirements (although all refiners of conventional gasoline are subject to the anti-dumping requirements). Moreover, all businesses, large and small, maintain the option to produce conventional gasoline to be sold in areas not obligated by the Act to receive RFG or those areas which have not chosen to opt into the RFG program. A complete analysis of the effect of the RFG/anti-dumping regulations on small businesses is contained in the Regulatory Flexibility Analysis which was prepared for the RFG and anti-dumping rulemaking, and can be found in the docket for that rulemaking. The docket number is: EPA Air Docket A–92–12.

Today's proposed rule will affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the Phoenix ozone nonattainment area, and gasoline distributors and retail stations in those areas. As discussed above, EPA determined that, because of their location, the vast majority of small refiners would be unaffected by the RFG requirements. For the same reason, most small refiners will be unaffected by today's action. Other small entities, such as gasoline distributors and retail stations located in Phoenix, which will become a covered area as a result of today's action, will be subject to the same requirements as those small entities which are located in current RFG covered areas. The Agency did not find the RFG regulations to significantly affect these entities.

Therefore, for the reasons dated in this section the Agency certifies that this action will not have a significant impact on a substantial number of entities.

**VIII. Executive Order 12866**

Under Executive Order 12866[2], the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order.

The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[3]

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

**IX. Unfunded Mandates**

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), P.L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that today's proposed rule does not trigger the requirements of UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

**List of Subjects in 40 CFR Part 80**

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: February 7, 1997.

**Carol M. Browner,**

*Administrator.*

40 CFR part 80 is proposed to be amended as follows:

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 is revised to read as follows:

**Authority:** Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.70 is amended by adding paragraph (m) to read as follows:

**§ 80.70 Covered areas.**

* * * * *

(m) The prohibitions of section 211(k)(5) will apply to all persons other than retailers and wholesale purchaser-consumers June 1, 1997. The prohibitions of section 211(k)(5) will apply to retailers and wholesale purchaser-consumers July 1, 1997. As of the effective date for retailers and wholesale purchaser-consumers, the Phoenix, Arizona ozone nonattainment area is a covered area. The geographical extent of the covered area listed in this paragraph shall be the nonattainment boundaries for the Phoenix ozone nonattainment area as specified in 40 CFR 81.303.

[FR Doc. 97–3927 Filed 2–14–97; 8:45 am]

BILLING CODE 6560–50–P

[2] *See* 58 FR 51735 (October 4, 1993).

[3] *Id.* at section 3(f)(1)–(4).

**DEPARTMENT OF THE INTERIOR**

**Bureau of Reclamation**

**43 CFR Part 418**

**RIN 1006–AA37**

## Adjustments to 1988 Operating Criteria and Procedures (OCAP) for the Newlands Irrigation Project in Nevada

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Proposed rule; availability of supplementary information and extension of comment period.

**SUMMARY:** This document announces the availability of detailed information on the computerized modeling run of Newlands Project operations used in developing the proposed rule, and the availability of summary information on other operations modeling runs considered. Also, the comment period on the proposed rule is extended by 60 days. The proposed rule adjusting the 1988 OCAP for the Newlands Irrigation Project was published in the **Federal Register** on December 9, 1996 (61 FR 64832). Written comments were requested by February 7, 1997. Several agencies and individuals have requested additional information and asked that the comment period be extended to provide additional time for the collection and analysis of relevant information and preparation of comments. As a result of these requests, the comment period has been extended until April 8, 1997.

**DATES:** Written comments should be submitted to be received by April 8, 1997. All comments received on or before that date will be considered and addressed in the Final Rule. Comments received after that date will be reviewed and considered as time allows.

**ADDRESSES:** Comments should be to the following address: Adjusted OCAP, Truckee-Carson Coordination Office, 1000 E. William Street, Suite 100, Carson City, NV 89701–3116. Supplemental information is available at the same address.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Zippin, Team Leader, Truckee-Carson Coordination Office, (702) 887–0640, or Ann Ball, Manager, Lahontan Area Office, (702) 882–3436.

**SUPPLEMENTARY INFORMATION:**

### Additional Information

Several individuals, organizations, and agencies have requested additional information regarding the proposed Adjustments to the 1988 OCAP. These parties want to see the data developed using the Truckee River operations model to examine in detail how the proposal may affect the Newlands Project water supply. The following information is available:

- A single page summary of modeling runs for the 1988 OCAP, the proposed Adjustments to the 1988 OCAP, and other modeling runs considered. This document is identified as ''Multiple Modeling Runs Summary''
- A 36-page summary of the ''174,000 acre-foot Storage Target Run'' for the proposed rule including 29 parameters relating to the Truckee River reservoir releases, Truckee and Carson River stream flow, Truckee Canal, Truckee Division, Lahontan Reservoir, Carson Division, Pyramid Lake, and Cui-ui. This document is identified as ''Proposed 1988 OCAP Adjustments Modeling Summary.''
- The 400-plus-page complete modeled output used to develop the proposed rule and identified as the ''174,000 acre-foot Storage Target Run.'' The data include monthly results for approximately 100 parameters over the 94-year period 1901–1994.

### Questions and Answers

Two public workshops were held in Fallon and Fernley, Nevada, January 8 and 9, 1997, respectively, to describe and answer technical questions about the proposed adjustments to the 1988 OCAP. The following questions and answers taken from the public workshops and from additional questions received on the proposed rule are presented below to assist reviewers in better understanding and commenting upon the proposed rule.

1. Q. Did the computer modeling runs used in developing the proposed rule include precipitation, runoff, or snowpack forecasts?

A. Administration of the OCAP every year relies on real-time runoff forecasts. However, the computer modeling uses historical records of Truckee and Carson River hydrology, including precipitation and snowpack runoff, and an error factor to simulate forecasting errors in assessing how the proposed rule would affect Newlands Project operations and water supply over a 94-year period of record.

2. Q. The model uses a total Project diversion demand of 294,000 acre-feet. Does this demand include both Carson Division and Truckee Division demand?

A. Yes, the 294,000 acre-foot demand includes active water rights in both Divisions.

3. Q. In the computer model, the ''beginning cui-ui'' number (adult females) remains constant in the modeling runs. Why is a constant value used?

A. The beginning cui-ui number is a common starting number in the cui-ui model. It is a calculated number, approximately 50,000, from the Cui-ui Recovery Plan. Because all the modeling is essentially a hindcast, it uses historical hydrology and historical conditions in the cui-ui population as a starting point. By using a common beginning, we can evaluate the effects of different water management actions on cui-ui. This is the basis for comparison of cui-ui population response to various water regimes on the Truckee River.

4. Q. Should the computer model be changed to reflect the increased cui-ui population of today?

A. No, it is not necessary to use the latest cui-ui numbers in evaluating relative impacts of different modeling runs. It is more important to use a common beginning because we are trying to compare the effects of different modeling runs on cui-ui. In these modeling runs, the starting number represents an initial condition. Just as in a bank account, you start with an initial deposit and then adjust the balance over time for deposits, withdrawals, interest, and fees. You don't go back and adjust the initial deposit just because you have more money in the bank today.

5. Q. Does the 294,000 acre-foot demand include water rights acquired to restore Stillwater National Wildlife Refuge and Carson Lake and Pasture wetlands?

A. Yes, it includes wetland water rights acquired to date which are approximately 5,200 acres of Carson Division agricultural water rights.

6. (a) Q. Does the model assume wetland water rights are used at 2.99 acre-feet per acre?

A. Yes, the modeling assumes a use rate of 2.99 acre-feet per acre.

(b) Q. What happens to the additional 0.51 or 1.51 acre-feet per acre?

A. The additional 0.51 or 1.51 acre-feet per acre stays in Lahontan Reservoir where it does two things. It increases the Carson Division water supply to all water users in shortage years; in full water years it remains in Lahontan Reservoir and reduces Truckee River diversions to the Reservoir in subsequent years.

7. Q. Are wetland water rights assumed to come out of the Truckee River diversions to the Project, increasing shortages to the Carson Division of the Project?

A. No, wetland water rights are acquired, active, agricultural water rights from within the Carson Division or from sources on the Carson River above Lahontan Reservoir. Water rights

acquired within the Carson Division share the same amount of Truckee River water, if any, in a given year as the rest of the Carson Division.

8. Q. Do the new conveyance efficiency targets include the delivery to Stillwater National Wildlife Refuge and Carson Lake and Pasture?

A. Yes, the conveyance efficiency targets apply to all water users, including the wetlands.

9. Q. If Project facilities are altered or new facilities constructed to aid water deliveries to the wetlands, will conveyance efficiency requirements be adjusted to account for such changes?

A. Carson Division conveyance efficiency measures the amount of water delivered to headgates as a percentage of the Lahontan Reservoir water released to serve those water rights. Changes in conveyance efficiency requirements could be considered in the future. It is premature to consider how changes to the wetlands water delivery system might affect conveyance efficiencies until such time as we know how much water delivery is affected, the stage of the water acquisition program, the geographic distribution of acquisitions, the degree to which entire canal/lateral systems are retired because appurtenant water rights have been acquired, conversion of Project irrigated lands and water use to development or municipal and industrial (M&I) use, and conveyance efficiency improvements made. At this time, it is impossible to know whether conveyance efficiencies would improve or decline from changes in the water delivery system.

10. Q. How was the proposed 65.7 percent conveyance efficiency requirement determined.

A. The 65.7 percent conveyance efficiency is an example based on 1995 Project data. The Bureau of Reclamation (BOR) constructed a linear extrapolation comparing the conveyance efficiency required in the 1988 OCAP for 64,850 water-righted acres with what would be required for 59,075 water-righted acres.

11. Q. Does the proposed conveyance efficiency requirement assume that the Truckee-Carson Irrigation District (TCID) will line canals?

A. No specific assumptions are made on the methods by which TCID will improve Project conveyance efficiency. Canal lining would be one way to improve conveyance efficiencies, as would better water measurement. Additional information on conveyance efficiency has been provided to TCID and other interested parties in the BOR's 1994 efficiency study for the Newlands Project. That document is available at the address above.

12. Q. Is the proposed Lahontan Reservoir storage target of 174,000 acre-feet a limit on how much water can be stored in the Reservoir at any time?

A. No, the proposed end-of-June storage target of 174,000 acre-feet would be used to determine if water would be needed from the Truckee River as a supplemental supply to Carson River inflow to the Reservoir. That target does not limit how much water can be stored in Lahontan Reservoir. Above the target, Carson River water may fill the Reservoir to its capacity.

13. Q. Since the adjustment to the Lahontan Reservoir storage targets is based in part on the reduced Project demand when compared to the 1988 OCAP, what will happen if the water transfer litigation results in greater acreage and more water demand?

A. This is something that bears watching and could be considered for changes in the future. The outcome of the water transfer litigation is unknown and may not be resolved for several years. Other changes within the Project may affect water demand, including but not limited to continued development of agricultural lands, changes in demand as the FWS acquires water (see number 4.b above), and water dedications to future M&I use. At this time, it is not possible to say whether future demand will increase or decrease, or know the magnitude of the change.

14. Q. Modeling for the 1988 OCAP indicated four shortage years for the Project. Why do the proposed Adjustments to the 1988 OCAP show nine shortage years?

A. The 1988 OCAP modeling used the hydrology for the 80-year period, 1901–1980, which included shortages in drought years 1931, 1934, 1961, and 1977. The proposed Adjustments to the 1988 OCAP are modeled using the hydrology from the 94-year period 1901–1994. The 14-year period 1981–1994 included five additional drought years (1988, 1990, 1991, 1992, and 1994) which adds five more shortage years. When the 1988 OCAP is examined using the 94-year hydrology, there are also nine shortage years.

15. Q. Why was the end of June storage target in Lahontan Reservoir reduced by 19 percent (174,000 acre-feet versus 215,000 acre-feet) when the project acreage is only 9 percent less than anticipated in the 1988 OCAP (59,075 acres versus 64,850 acres)?

A. The proposed storage target adjustments attempt to (among other things) more closely balance the water supply to the demand in the Carson Division. The demand is based on water-righted, irrigated acres to be served. The supply is composed of inflow to Lahontan Reservoir from the Carson River and water from the Truckee River as a supplementary supply. In the proposed rule, the Lahontan storage targets, which govern Truckee River diversions, are adjusted so that the decrease in average water supply is commensurate with the current demand. Just a percentage comparison of storage targets and acreage does not tell the whole story. The proposed 19 percent change in the storage target for regulating the supplemental supply is not comparable to the change in demand based on water-righted, irrigated acres. For example, even if demand were reduced 100 percent based on zero irrigated acres, there would still be enough water supply from the Carson River inflow alone to serve tens of thousands of acres. In developing the proposed rule, percentage reductions in storage targets were considered but those targets did not adjust the supply to match the current demand. Based on modeled averages, Carson Division water supply in the proposed Adjustments to the 1988 OCAP compared to under the 1988 OCAP assumptions indicates a decrease of 7 percent (264,120 acre-feet versus 284,180 acre-feet). As noted in the question, the acreage difference is 9 percent less.

16. Q. Why does modeling show a difference in the proposal between the water shortages in the Carson Division between the Fallon Paiute-Shoshone Tribe and the rest of the water users?

A. The difference in shortage between the Fallon Tribe and the rest of the Carson Division results from the cap on their water use. During shortages, Project water deliveries have been based on total water-righted acres. The Fallon Tribe total water right is 19,041 acre-feet, but use is capped at 10,587.5 acre-feet. [Public Law 101–618, section 103(c)] The Tribe's supply of water in a water short year is based on its water right, thus in any shortage year down to a 56 percent year, the Tribe would receive all of its water permitted by the use cap.

**Extension of the Comment Period**

The comment period on the proposed Adjustments to the 1988 OCAP rulemaking is extended to allow parties to consider the supplemental material being made available through this notice, and because of flooding in western Nevada. The Truckee, Carson, and Walker Rivers in Nevada began flooding on January 1, 1997, and continued under flood watches and warnings in some river segments for several weeks. Some parties interested in or affected by the proposed

rulemaking have been directly affected by the flooding. Many more parties, including the public, and local, State, and Federal agencies wish to make comments on the proposed rule but have been preoccupied in flood water management operations and/or flood recovery activities. The Truckee-Carson Coordination Office has received many written requests for extension, all citing the floods as affecting the time they have available to review the proposed rule and provide comments. An additional 60 days would allow all interested parties to review the proposed rule and supplemental information, and prepare and submit comments.

**John Garamendi,**

*Deputy Secretary.*

[FR Doc. 97–3946 Filed 2–14–97; 8:45 am]

BILLING CODE 4310–RK–M

## Bureau of Land Management

## 43 CFR Parts 6300 and 8560

**[WO–420–1060–00 24 1A]**

**RIN 1004–AB69**

## Wilderness Management

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Extension of comment period for proposed rule.

**SUMMARY:** On December 19, 1996, the Bureau of Land Management (BLM) published a document in the **Federal Register** announcing a proposed rule to revise and update existing regulations for management of designated wilderness areas (61 FR 66968). The 60-day comment period for the proposed rule expires on February 18, 1997. BLM has received several requests from the public for additional time to comment and is extending the comment period for an additional 60 days.

**DATES:** Submit comments by April 21, 1997.

**ADDRESSES:**

If you wish to comment, you may:

(a) Hand-deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW., Washington, DC.;

(b) Mail comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW., Washington, DC 20240; or

(c) Send comments through the internet to WOComment@wo.blm.gov. Please include ''attn: AB69'', and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your internet message, please contact us directly at (202) 452–5030.

You will be able to review comments at BLM's Regulatory Affairs Group office, Room 401, 1620 L Street, NW., Washington, DC, during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Rob Hellie, Cultural Heritage, Wilderness, Special Areas & Paleontology Group, at (202) 452–7703.

Dated: February 11, 1997.

**Frank Bruno,**

*Acting Manager, Regulatory Affairs Group.*

[FR Doc. 97–3823 Filed 2–14–97; 8:45 am]

BILLING CODE 4310–84–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 73 and 76

**[MM Docket Nos. 94–150, 92–51, 87–154, 91–221, 87–8, 96–222 & 96–197; DA 97–210]**

## Broadcast Services; TV Ownership; Newspaper/Radio Cross Ownership

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of reply comment deadline.

**SUMMARY:** The Commission granted a two-week extension of the deadline to file reply comments in the above-cited dockets in response to a request filed by the Media Access Project (MAP) on behalf of a number of other organizations. The deadline to file reply comments in these proceedings is now March 21, 1997. The Commission determined that a brief extension of the reply comment deadline was warranted to facilitate the development of a full record, but declined to grant a longer extension of the reply comment deadline or to extend the deadline for filing initial comments as requested by MAP. The intended effect of this action is to allow the parties additional time to review the initial comments filed in these proceedings and to prepare reply comments responding to the issues raised in the initial comments.

**EFFECTIVE DATE:** Reply comments are now due by March 21, 1997.

**ADDRESSES:** Federal Communications Commission, 2000 M Street, N.W., Suite 500, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Kim Matthews, Mania Baghdadi, Paul Gordon, Roger Holberg or Charles Logan (202) 418–2130, Mass Media Bureau.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Order* granting an extension of time for filing reply comments in MM Docket Nos. 94–150, 92–51, 87–154, 91–221, 87–8, 96–222 and 96–197; DA 97–210, adopted January 30, 1997, and released January 30, 1997. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

### Synopsis of Order Extending Time for Filing Reply Comments

1. On November 5, 1996, the Commission adopted three related rulemaking items regarding national and local ownership of television stations and attribution of broadcast and cable/MDS ownership interests. *Notice of Proposed Rule Making*, 61 FR 66987 (December 19, 1996) in MM Docket Nos. 96–222, 91–221, and 87–8, FCC 96–437 (released November 7, 1996) (national ownership proceeding); *Second Further Notice of Proposed Rule Making*, 61 FR 66978 (December 19, 1996) in MM Docket Nos. 91–221 and 87–8, FCC 96–438 (released November 7, 1996) (local ownership proceeding); *Further Notice of Proposed Rule Making*, 61 FR 67275 (December 20, 1996) in MM Docket Nos. 94–150, 92–51, and 87–154, FCC 96–436 (released November 7, 1996) (attribution proceeding). Comments in all three of these proceedings are currently due by February 7, 1997, and reply comments are currently due by March 7, 1997. In addition, on September 17, 1996, the Commission adopted a *Notice of* Inquiry, 61 FR 53694 (October 15, 1996) regarding its policy for waiving its newspaper/radio cross ownership restriction. *Notice of Inquiry* in MM Docket 96–197, 11 FCC Rcd 13003 (1996). Comments in that proceeding were initially due to be filed by December 9, 1996, and reply comments by January 8, 1997. By Order released December 5, 1996, the Commission extended the comment and reply comment deadlines in that proceeding to coincide with the comment and reply comment deadlines in the national ownership, local ownership, and attribution proceedings. In so doing, the Commission reasoned that the issues raised in the newspaper/radio cross ownership proceeding were similar to those raised in the other three rulemaking proceedings, and that it was appropriate that the four proceedings share the same comment and reply

comment deadlines to facilitate the development of a more comprehensive record.

2. On January 17, 1997, the Media Access Project (MAP), on behalf of a number of other organizations, filed a request for a thirty day extension of both the comment and reply comment deadlines in the national ownership, local ownership, and attribution proceedings. In the alternative, in the event the Commission declines to grant this request, MAP requests a forty-five day extension of the reply comment deadline in the three proceedings. In support of its request, MAP argues that each of the rulemaking proceedings involves matters of great importance, and that the short comment and reply comment periods create an onerous workload for parties interested in filing comments, especially counsel for members of the public which have limited staff and resources. Because the comment and reply comment deadlines in the three proceedings coincide, MAP argues that it will be difficult to thoroughly address the issues raised in each of the separate proceedings. MAP claims this difficulty is especially pronounced with respect to preparation of reply comments, as commenters will have only one month in which to read and respond to the initial comments filed in all three proceedings. Finally, MAP notes that there are a number of other unrelated proceedings currently before the Commission with similar comment deadlines in which MAP is participating, further straining its resources.

3. As set forth in Section 1.46 of the Commission's rules, 47 CFR 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. We gave interested parties three months in which to prepare and file initial comments in the three proceedings for which MAP requests extensions, and we continue to believe this amount of time is adequate to permit development of a comprehensive record. However, given the total number of comments we expect to receive in the three proceedings, the complexity of the issues involved, and the interrelated issues raised by the three proceedings, we believe it is appropriate to grant an additional 14 days in which to file reply comments. While this is not as long as MAP's alternative request to extend the reply comment deadline, we believe a 14-day extension is sufficient in that it will give parties a total of 45 days after the initial comments are filed in which to file reply comments. Although MAP did not request an extension of time with respect to the newspaper/radio cross ownership proceeding, we also, on our own motion, extend the reply comment deadline in that proceeding to maintain a concurrent schedule for all four proceedings.

4. Accordingly, *it is ordered* that the Request for Extension of Time to Submit Comments and Reply Comments filed in MM Docket Nos. 94–150, 92–51, 87–154, 91–221, 87–8, and 96–222 by MAP is granted to the extent detailed herein.

5. *It is further ordered* that the time for filing reply comments in the above-captioned proceedings is extended to March 21, 1997.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Sections 0.204(b), 0.283, and 1.45 of the Commission's rules, 47 CFR §§ 0.204(b), 0.283, and 1.45.

**List of Subjects**

*47 CFR Part 73*

Television, Radio.

*47 CFR Part 76*

Cable television.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Mass Media Bureau.*

[FR Doc. 97–3953 Filed 2–14–97; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register
Vol. 62, No. 32
Tuesday, February 18, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Notice of Intent To Extend and Revise a Currently Approved Information Collection

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for and revision to a currently approved information collection, the annual survey of farmer cooperatives, as authorized in the Cooperative Marketing Act of 1926.

**DATES:** Comments on this notice must be received on or before April 21, 1997.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Kraenzle, Director, Statistics and Technical Services Staff, RBS, U.S. Department of Agriculture, STOP 3256, 1400 Independence Avenue, SW., Washington, D.C. 20250–3256, Telephone (202) 720–3189.

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Survey of Farmer Cooperatives.

*OMB Number:* 0570–0007.

*Expiration Date of Approval:* September 30, 1997.

*Type of Request:* Intent to extend and revise a currently approved information collection.

*Abstract:* The primary objective of Rural Business-Cooperative Service (RBS) is to promote understanding, use and development of the cooperative form of business as a viable option for enhancing the income of agricultural producers and other rural residents. Cooperative Services' (CS) direct role is providing knowledge to improve the effectiveness and performance of farmer cooperative businesses through technical assistance, research, information, and education. The annual survey of farmer cooperatives collects basic statistics on cooperative business volume, net income, members, financial status, employees, and other selected information to support CS' objective and role. Cooperative statistics are published in various reports and used by the U.S. Department of Agriculture, cooperative leaders, educators, and others in planning and promoting the cooperative form of business.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 29 minutes per response.

*Respondents:* Farmer cooperatives.

*Estimated Number of Respondents:* 3,082.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1,487 Hours.

Copies of this information collection and repeated instructions can be obtained from Sam Spencer, Regulations and Paperwork Management Division, at (202) 720–9588.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to: Sam Spencer, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, STOP 0743, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 5, 1997.

Dayton J. Watkins,

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. 97–3846 Filed 2–14–97; 8:45 am]

BILLING CODE 3410–XY–U

### Sunshine Act Meeting

**AGENCY:** Rural Telephone Bank, USDA.

**ACTION:** Notice of cancellation of Board meeting.

**SUMMARY:** At the December 11, 1996, regular meeting of the Rural Telephone Bank (Bank) Board of Directors, the Board established February 19 and 20, 1997, as the dates for its next staff briefing and regular Board meeting, respectively. The purpose of this notice is to advise the public that the February 19 and 20 meetings have been rescheduled. The Bank will publish notice of the rescheduled meeting dates in the Federal Register, and the Bank will send the stockholders written notification of these dates.

**FOR FURTHER INFORMATION CONTACT:** Robert Peters, Assistant Governor, Rural Telephone Bank, telephone (202) 720–9554.

Dated: February 10, 1997.

Wally Beyer,

*Governor, Rural Telephone Bank.*

[FR Doc. 97–3989 Filed 2–12–97; 4:25 pm]

BILLING CODE 3410–15–M

## Rural Utilities Service

## Rural Telephone Bank

### Amendment to the Rural Electrification Act's ''Buy American'' Provision

**AGENCY:** Rural Utilities Service and Rural Telephone Bank, USDA.

**ACTION:** Notice of Amendment to the Rural Electrification Act's ''Buy American'' Provision.

**SUMMARY:** The Uruguay Round Agreements Act, (108 Stat. 4954, Public Law 103–465, December 8, 1994), amends the ''Buy American'' provision, (7 U.S.C. 903 note) of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (the ''RE Act'). In the provision, as amended by the Uruguay Round Agreements Act, the

words ''Mexico, or Canada'' are replaced with ''or in any eligible country''. The United States Trade Representative (USTR) determines what countries are ''eligible''. As amended, the provision directs the Secretary of Agriculture, for the Rural Utilities Service (RUS), (previously the Rural Electrification Administration) to require that, to the extent practicable and the cost not unreasonable, a borrower use funds lent under the RE Act only for such unmanufactured articles, materials, and supplies, as have been mined or produced in the United States or eligible country and only such manufactured articles, materials, and supplies as have been manufactured in the United States or an eligible country substantially all from articles, materials or supplies mined, produced, or manufactured, as the case may be, in the United States or an eligible country.

This action is intended to provide borrowers receiving loans made by the Rural Telephone Bank (RTB) or loans made or guaranteed by RUS, as well as material and equipment manufacturers and the public, with information for compliance with the amended RE Act ''Buy American'' provision.

**FOR FURTHER INFORMATION CONTACT:** For electric program matters: George Bagnall, Director, Electric Staff Division, RUS, U.S. Department of Agriculture, STOP 1569, 1400 Independence Ave., SW., Washington, DC 20250–1569. Telephone number (202) 720–1900, fax (202) 720–7491.

For telecommunications program matters: Orren E. Cameron, III, Director, Telecommunications Standards Division, RUS, U.S. Department of Agriculture, STOP 1598, 1400 Independence Ave., SW., Washington, DC 20250–1598. Telephone number (202) 720–8663, fax (202) 720–4099.

**SUPPLEMENTARY INFORMATION:** Section 342(g) of the Uruguay Round Agreements Act, amended the RE Act ''Buy American'' provision by replacing the words ''Mexico, or Canada'' with ''or in any eligible country'' and by authorizing the United States Trade Representative (USTR) to determine what countries are eligible. The ''Buy American'' provision now reads:

''In making loans pursuant to * * * the Rural Electrification Act of 1936 * * * the Secretary of Agriculture shall require that, to the extent practicable and the cost of which is not unreasonable, the borrower agree to use in connection with the expenditure of such funds only such unmanufactured articles, materials and supplies, as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country, substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States or in any eligible country. For purposes of this section, an 'eligible country' is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and United States suppliers to the markets of that country, as determined by the United States Trade Representative.''

The RUS ''Buy American'' provision applies to any loan made by the RTB or made or guaranteed by the RUS. Whether a particular product is domestic or non-domestic for purposes of the RE Act ''Buy American'' provision depends upon such factors as the country of origin of the product and its component parts and whether the product is purchased by an electric borrower or a telecommunications borrower.

The eligibility status of Canada and Mexico has not changed. Products produced in Canada or Mexico substantially consisting of components produced in Canada, Mexico, or the United States and purchased with RTB or RUS electric or telephone loan funds are treated as United States domestic products.

At this time the USTR has determined that only Canada and Mexico are eligible countries for purchases made by telecommunications borrowers. Therefore, products produced in countries other than the United States, Canada, or Mexico and purchased by RUS telecommunications borrowers are not treated as domestic products for purposes of the RE Act ''Buy American'' provision. The amendment makes no change in the treatment of these purchases unless and until the USTR determines additional ''eligible countries'' for telecommunications borrowers.

At this time, the USTR has determined that the following countries have agreements ensuring reciprocal access regarding products used by electric borrowers, and are therefore ''eligible countries'' for purchases made by electric borrowers:

Austria
Belgium
Denmark
Finland
France
Germany
Greece
Ireland
Israel
Italy
Japan
Korea
Luxembourg
The Netherlands
Norway
Portugal
Singapore
Spain
Sweden
Switzerland
United Kingdom

Products from an eligible country consisting substantially of components produced in the United States or any eligible country and purchased by RUS electric borrowers with RUS loan funds will be considered to be domestic products for purposes of the RE Act ''Buy American'' provision.

The USTR may at any time declare one or more additional countries to be ''eligible countries'' for either electric or telecommunications borrowers. The Chair of Technical Standards Committee ''A'' (Electric) will be the point of contact for RUS with respect to USTR determinations of eligible countries. Each RUS borrower is responsible for assuring that its procurement complies with the requirements of the RE Act ''Buy American'' provision.

RUS is making technical revisions to its existing forms of loan contracts and loan contract amendments to conform them to the RE Act ''Buy American'' provision as amended. In addition, RUS will make similar technical revisions to its standard forms of contracts providing for the purchase of materials and equipment and for ''furnish and install'' type construction. Until these forms are revised, the borrower should make the appropriate changes in its contract forms.

Dated: February 5, 1997.

Wally Beyer,

*Administrator, Rural Utilities Service, and Governor, Rural Telephone Bank.*

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BILLING CODE 3410–15–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–427–811]**

### Certain Stainless Steel Wire Rods From France: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On October 10, 1996, the Department of Commerce (the Department) published the preliminary results of the second administrative review of the antidumping duty order on certain stainless steel wire rods from France. This review covers Imphy S.A., and Ugine-Savoie, two manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is January 1, 1995, through December 31, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

**EFFECTIVE DATE:** February 18, 1997.

**FOR FURTHER INFORMATION CONTACT:** Stephen Jacques, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–3434.

**SUPPLEMENTARY INFORMATION:**

## The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

## Background

On October 10, 1996, the Department published in the Federal Register the preliminary results of the second administrative review of the antidumping duty order on certain stainless steel wire rods from France (61 FR 53199, October 10, 1996). The Department has now completed this administrative review in accordance with section 751 of the Act.

## Scope of the Review

The products covered by this administrative review are certain stainless steel wire rods (SSWR), products which are hot-rolled or hot-rolled annealed, and/or pickled rounds, squares, octagons, hexagons, or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

## Verification

As provided in section 782(i) of the Act, we verified information provided by the respondent by using standard verification procedures, including onsite inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

## Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttal comments from Imphy S.A. and Ugine-Savoie, manufacturers/exporters of the subject merchandise (respondents), and from Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and United Steelworkers of America, AFL-CIO/CLC (petitioners).

*Comment 1:* Respondents argue that the Department incorrectly set the payment date for every U.S. sale to the projected final results date instead of only those sales with unreported payment dates.

Petitioners contend that respondents' assertion that the Department incorrectly set the payment dates for all U.S. sales is wrong. Petitioners argue that the Department's computer program correctly used the projected date of the final results for only those U.S. sales with unreported payment dates and that the Department should reject respondents' proposed computer code correction.

Petitioners further note that the sample computer printout from the Department's preliminary margin calculations indicates that the date of payment for all ten sample sales remained the same after the execution of the programming language that established a payment date for those sales with unreported payment dates. Petitioners assert that a review of the Department's sample sales in the preliminary results demonstrates that the Department did not reset the payment date and therefore there is no need for the Department to revise the computer code as recommended by respondents.

*Department's Position:* We agree with petitioners. In the preliminary results, the computer program correctly set the date of payment to the projected final results date only for those sales with unreported payment dates. Therefore, for the final results, we have made no changes to the computer program.

*Comment 2:* Respondents allege that the Department's formula to calculate U.S. credit expense for unpaid sales had two errors. First, respondents contend that the formula used an unadjusted gross unit price instead of being based on the gross unit price less discounts and billing adjustments plus freight revenue. Second, respondents assert that the Department used the home market interest rate rather than the appropriate U.S. short-term rate.

Petitioners agree with respondents that modifications of the computer program are necessary to adjust gross price and to use the correct rate of interest in the credit calculation.

*Department's Position:* We agree and have corrected the calculation of credit expenses for the final results.

*Comment 3:* Respondents contend that the price paid by Imphy to an affiliated supplier for remelting services is an arm's-length price and should not have been adjusted by the Department. Respondents assert that the price Imphy paid for subcontracted remelting services is a negotiated, arm's-length price based on the affiliate's budgeted cost for the remelting services that included both fixed and variable costs. Respondents argue that this subcontracting arrangement is fair and benefits both Imphy and the affiliated party. In support of their position, respondents state that the arrangement allowed the affiliated party to make use of its excess remelting capacity, and thus to lower its overall cost of operations. Respondents also assert that the arrangement benefits Imphy which has the ability to efficiently produce products requiring the remelting process.

Respondents note that the Department disregarded the actual price charged by the affiliated party on the ground that the price did not reflect variances from

budgeted costs or SG&A expenses. However, respondents assert that variances can go in either direction and do not affect the arm's-length nature of the price. In addition, respondents claim that arm's-length prices do not necessarily have to be at or above cost of production for purposes of section 773(f)(2). Consequently, respondents assert that there is no justification for the Department having adjusted the price. Also, respondents contend that the remelting services did not represent a ''major input'' for which cost information is pertinent pursuant to section 773(f)(3). Accordingly, respondents argue that the Department should retract its adjustment to the price Imphy paid the affiliated party and, instead, utilize the verified, actual price paid for such services in computing cost of manufacture.

Petitioners disagree with respondents and contend that respondents'' arguments are similar to those submitted by a respondent in a *Bearings* review that were rejected by the Department. *See Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 61 FR 57629, 57643–4 (November 7, 1996)(*Bearings*).

Petitioners contend that there is no statutory requirement that the remelting cost be a ''major input'' to the production of subject merchandise for the Department to disregard a transfer price between affiliated parties that is below cost. Petitioners note that section 773(f)(2) of the amended statute gives the Department authority to disregard ''any element of value'' in transactions between affiliated parties that does not reflect the market value of the merchandise.

Petitioners note that Imphy had no remelter other than its affiliated supplier to use as a basis for establishing market value. Accordingly, the Department examined the cost of the remelting rather than the transfer price. Petitioners contend that the Department's practice in this regard was in accordance with Section 773(f)(2) and consistent with the past practice in the *Bearings* review.

Petitioners also disagree with respondents'' contention that cost variances can go in either direction and do not affect the arm's-length nature of the price. Petitioners argue that Imphy had relied on estimated costs that understated actual costs. Consequently, petitioners assert that the addition of the cost variances permitted the Department to account for all costs incurred.

*Department's Position:* We agree with petitioners. Pursuant to section 773(f)(2), the Department, in general, determines whether the affiliated party prices were below normal market value. We do not use transfer prices between related companies if such prices do not fairly reflect the amount usually reflected in the sales of the merchandise under consideration.

As we discussed in the *Bearings* case, related party parts or inputs do not need to be a ''major input'' for the Department to examine whether they are obtained at a transfer price which reflects their normal market value. Two separate sections of the Act allow the Department to disregard transfer prices for transactions between affiliated parties: section 773(f)(2) allows us to disregard such transactions if the transfer prices for ''any element of value'' do not reflect their normal market value and section 773(f)(3) allows the Department to disregard such transactions if the transfer prices for ''major inputs'' are below their cost of production.

In this review, the affiliated party did not sell remelting services to unaffiliated customers, nor did Imphy purchase remelting services from any unaffiliated party during the POR. Consequently, there were no arm's-length prices to serve as a basis of comparison. In such situations, ''Commerce generally use[s] the cost of the components as representative of the value reflected in the market under consideration.'' (See *Bearings*, 61 FR at 57644; and *NSK Ltd. v. United States*, 910 F. Supp. 663, 669 (CIT 1995)). Therefore, in accordance with our standard practice, we have based the value of the remelting services on cost, including variances and SG&A, for the final results.

*Comment 4:* Respondents allege that the Department improperly overstated the adjustment to cost of manufacture for products involving remelting services. Respondents note that in its preliminary results, the Department stated that it intended to increase the cost of manufacture for remelting services to include the sum of the affiliated party's cost variance, activity variance and SG&A that was not included in the price that Imphy paid to the affiliated party. Respondents contend that the Department adjusted the total cost of manufacture for those Imphy products utilizing the remelting services, instead of adjusting only the manufacturing cost. Respondents argue that the Department incorrectly increased all of the materials, labor and overhead costs for the product, rather than adjusting the cost attributable to the remelting services obtained from the related party. Respondents argue that the Department should correct its calculation error by applying an adjustment factor.

Petitioners agree with respondents that the Department overstated the adjustment to cost of manufacture for remelting services.

*Department's Position:* We agree with respondents and petitioners. We have applied the adjustment factor for remelting cost variances and SG&A to the cost of remelting only and not to the total cost of manufacture.

*Comment 5:* Respondents allege that the Department should have made a circumstance-of-sale adjustment to constructed value (CV) for home market credit expense. Respondents contend that the Department should recognize the propriety of subtracting home market credit expense from CV as a circumstance-of-sale (COS) adjustment, as the Department has previously done (citing *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan,* 61 FR 38139, 38147 (July 23, 1996) (*Newspaper Printing Presses*)).

Respondents argue that the Department's general methodology regarding the determination of normal value and COS adjustments recognizes that home market price covers all costs and expenses, including the imputed home market credit expense. Respondents assert that imputed credit expenses are likewise included in determining CV and an adjustment should be made. Respondents contend that the profit included in the CV calculation represents the difference between the home market prices and production and SG&A expenses included in CV. They assert that since home market credit expense is included in home market price, it is imbedded in the calculated CV through a combination of the interest expense and home market profit. Therefore, respondents argue that to ensure an apples-to-apples comparison, the Department must subtract home market credit expense from CV as a COS adjustment.

Petitioners note that respondents' arguments concerning a COS adjustment to CV for imputed home market credit expense were rejected by the Department in the amended final results of the first administrative review (*See Amended Final Results of Certain Stainless Steel Wire Rods from France,*

61 FR 58523, 58524 (November 15, 1996)).

Petitioners note further that in its amended final, the Department cited *Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30361 (June 14, 1996) which states that the Department is required to calculate selling, general and administrative costs, including interest expenses, based upon the actual experience of the company. Petitioners assert that because the interest expense for CV now reflects actual amounts incurred and not imputed credit expense, a COS adjustment for home market imputed credit is inappropriate. Petitioners contend that in *Newspaper Printing Presses*, the Department also stated that it can only account for actual credit expenses in CV and that ''imputed credit is, by its nature, not an actual expense.''

Petitioners also disagree with respondents' arguments that imputed credit expenses are ''imbedded in the calculated CV'' and therefore subject to adjustment. Petitioners assert that this analysis is not valid, as it attempts to equate the expenses incurred in production of the product with the final price of the product by assuming the profit component necessarily reflects opportunity costs. Petitioners contend that respondents' argument would result in the assumption that any component that did not reflect an actual cost is somehow imbedded in the profit figure and, hence, require a COS adjustment. Petitioners argue that such a result would be inconsistent with the express statutory language limiting expenses included in CV to ''actual'' expenses (*See* 19 U.S.C. 1677b(e)).

*Department's Position:* We agree with respondents. As we stated in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy et al.; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2119 (January 15, 1997), consistent with section 773(a)(8) of the Act, an adjustment to NV is appropriate when CV is the basis for NV. The Department uses imputed credit expenses to measure the effect of specific respondent selling practices in the United States and the comparison market. Therefore, for these final results, we have deducted imputed credit expenses as a COS adjustment from CV in the calculation of NV. To the extent that the amended final of *Wire Rod from France* (*See*, 61 FR 58523, 58524 (November 15, 1996)) describes the Department's methodology differently, it was in error.

*Comment 6:* Respondents contend that the Department's product concordance inadvertently matched to CV those U.S. sales that had a entry date outside the POR. Respondents request the Department modify the model match program to correct this error.

Petitioners agree with respondents and contend the error should be corrected for the final results.

*Department's Position:* We agree and have corrected the error for the final results.

*Comment 7:* Respondents contend that the Department should clarify language regarding its duty assessment methodology. They assert that the methodology stated in the preliminary results is consistent with the assessment methodology set forth in the Department's proposed regulations and preamble, as well with the duty assessment methodology stated in *Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*, 61 FR 57629, 57649 (November 7, 1996); however, respondents claim that the language in the Department's preliminary results is unclear.

Petitioners contend that the Department's assessment methodology must ensure that the full amount of dumping duties is collected. Petitioners claim that the Department should follow the duty assessment language in the preliminary results of this review and assess a weighted-average *ad valorem* margin calculated by dividing the total dumping duties due by the total EP and CEP values calculated by the Department.

*Department's Position:* The Department will follow the duty assessment language in the preliminary results. Therefore, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific *ad valorem* duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. As noted in the preliminary results, this is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP or CEP, by the total statutory EP or CEP value of the sales compared, and adjusting the result by the average difference between EP or CEP and customs value for all merchandise examined during the POR.

*Comment 8:* Respondents allege that the Department's computer program erroneously set at zero the profit for any sale with a negative profit, regardless of whether the sale passed the Department's below-cost test. They assert that pursuant to section 773(b)(1), individual sales of a particular product that are made at a loss are outside the ordinary course of trade only if 20 percent or more of the sales of that product are at prices below the cost of production. Respondents argue that unless 20 percent or more of the sales of the product were made below cost, all sales of the product, including those sold at a loss, are by definition in the ordinary course of trade. Respondents further contend that section 773(e)(2)(A) provides that the calculation of CV profit be based on the actual amount of profit realized on all sales in the ordinary course of trade of the foreign like product. They allege that by excluding the amount of the losses on certain sales in the ordinary course of trade, the Department overstated CV profit.

*Department's Position:* We agree with respondents that this is a ministerial error and have revised the final results in order to calculate CV profit on the actual amount of profit on all sales in the ordinary course of trade.

*Comment 9:* Respondents allege that in the preliminary results, the Department weight-averaged the profit percentage calculated on each individual sale, rather than calculating an aggregate profit and COP amount and then calculating the percentage. Respondents allege that this percentage methodology is a departure from the Department's customary practice and artificially inflated respondents' CV profit rate. Respondents argue that the Department has recognized that calculating the CV profit ratio by first computing a profit percentage for each home market sales transaction, and then weight-averaging the percentages by quantity, introduces serious distortion into the calculations (*see, Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 61 FR 56514 (November 1, 1996)). Respondents request that the Department make the same correction in this review.

*Department's Position:* We agree with respondents. In accordance with our position outlined in *Lead and Bismuth*

*Carbon Steel Products,* we have revised our computer programming language for the final results.

*Comment 10:* Petitioners assert that the Department should revise its CEP calculation by deducting all direct and indirect selling expenses that relate to U.S. sales as required by statute (*see* 19 U.S.C. 1677a(d)(1) (1996)). Petitioners claim the statutory language is mandatory, allowing no room for discretion in agency interpretation as to which expenses may or may not be deducted.

Petitioners claim that the Department's conclusion that the URAA changed prior law with respect to the calculation of CEP is not consistent with the statute or the SAA (*see,* 19 U.S.C 1677d(1)). They argue that the Department must deduct all indirect selling expenses incurred by the foreign producer or exporter in its home country that related to U.S. sales (*see, Silver Reed America, Inc.* v. *United States,* 12 CIT 250, 683 F. Supp. 1393, 1397 (1988).

Petitioners further contend that the URAA did not limit the types of deductions to CEP from prior law, but rather provided a more precise definition without changing the calculation of export price or CEP. They note that the SAA states ''[t]he statute is intended to merely provide a more precise definition and not change the calculation of export price or constructed export price'' (*see,* SAA at 824). Petitioners contend that even if the SAA suggested a change in agency practice, it cannot override the plain statutory language requiring the deduction of all selling expenses (*see, Chevron U.S.A., Inc.* v. *National Resources Defense Council, Inc.,* 467 U.S. 837, 843 (1984)).

Petitioners argue that even if the Department determines that all indirect selling expenses relating to U.S. sales are no longer deductible from CEP, at a minimum it must deduct inventory carrying costs incurred after importation in calculating CEP, as these costs are necessarily attributable to U.S. sales. In support of their position, petitioners cite *Silver Reed* and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 30326, 30352 (June 14, 1996).

Respondents contend that petitioners have submitted the same argument concerning deduction of indirect selling expenses in the first administrative review and that the Department properly rejected their contention. They argue that there is nothing new in the law or the facts of this review that should cause the Department to reconsider its decision. Respondents assert that these indirect expenses should not be deducted from CEP as they do not represent expenses ''associated with economic activities occurring the United States'' (see, SAA at 153).

Respondents state the Department's approach in this review is consistent with its practice in other cases (*see, Calcium Aluminate Flux From France; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 40396, 40397 (August 2, 1996) and *Preliminary Results of Antidumping Duty Administrative Reviews of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Thailand and the United Kingdom,* 61 FR 35713, 35716 (July 8, 1996). They also contend that the Department's decision is consistent with the *Proposed Regulations* as the commentary of the *Proposed Regulations* makes a clear distinction between expenses associated with selling to the affiliated reseller in the United States and those expenses attributable to the sale made to the affiliated reseller's unaffiliated customer. Respondents claim that the expenses at issue are clearly expenses associated with selling to the affiliated reseller in the United States and thus, are not properly deducted in the calculation of CEP.

Finally, respondents disagree with petitioners' request to deduct, at a minimum, inventory carrying costs incurred after import. Respondents assert that these expenses relate to the respondents' U.S. affiliate and not to the unaffiliated U.S. customer.

*Department's Position:* We disagree with petitioners. As we stated in the final results of the first administrative review of this order (*see Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review,* 61 FR 47874, 47882 (September 11, 1996) (Wire Rod from France)), the Department does not deduct indirect expenses incurred in selling to the affiliated U.S. importer under section 772(d) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 30326, 30352 (June 14, 1996). As stated clearly in the SAA, section 772(d) of the Act is intended to provide for the deduction of expenses associated with economic activities occurring in the United States. *See SAA* at 823; *see also,* GATT 1994 Antidumping Agreement, article 2.4. However, some of the respondents' indirect expenses incurred in the home market are actually associated with economic activities in the United States. Specifically, liability insurance purchased in France is associated with U.S. economic activities to the extent it covers subject merchandise while warehoused in the United States. On the other hand, some indirect selling expenses involved in this case relate solely to the sale to the affiliated importer. For example, the inventory carrying costs incurred prior to exportation relate solely to the sale to the affiliated importer. Further, unlike the situation in *Pasta from Italy,* the inventory carrying costs in the present case do not relate exclusively to the product sold to the unaffiliated purchaser in the Untied States as verified by the Department (*cf. Pasta from Italy,* 61 FR at 30352). We agree with petitioners that the inventory carrying costs incurred after import relate to respondents' economic activity in the United States and are properly deducted as indirect selling expenses.

*Comment 11:* Petitioners contend that the Department should begin its level-of-trade analysis with the starting price to the unaffiliated purchaser, as required by statute (*See* 19 U.S.C. 1677a(b)). Petitioners argue that comparison of an adjusted CEP to an unadjusted normal value in an apples-to-oranges comparison and is inconsistent with past agency practice (*See Porcelain-on-Steel Cooking Ware from Mexico,* 58 FR 43227, 43330 (August 16, 1993) and *AOC International, Inc.* v. *United States,* 721 F. Supp. 314, 317 (1989), *citing Smith-Corona Group* v. *United States,* 713 F.2d 1568, 1572 (Fed. Cir. 1983), *cert. denied,* 465 U.S. 1022 (1984)).

Petitioners argue that use of the starting CEP price as the basis of the level-of-trade comparison would result in a finding of no differences in levels of trade between CEP and normal value (NV) sales and, thus, no basis for a CEP offset. Thus, they contend that by defining the CEP level of trade based on an adjusted price rather than the starting price, the Department has created a level of trade for CEP sales that is different from the EP sales and the NV sales, even though in commercial reality the level of trade of all these sales is the same.

Respondents argue that petitioners challenged the Department's decision to grant a CEP offset in the first administrative review and that the Department rejected their argument. Respondents contend that the Department's decision in this review is consistent with the first administrative review as well as other reviews (*See Tapered Rolling Bearings,* 61 FR 57391, 57395; *Large Newspaper Printing Presses,* 61 FR 38139, 38143; *Aramid*

*Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 15766, 15768 (April 9, 1996)). Respondents claim that there is nothing new in the law or the facts of the second administrative review to alter the Department's decision from those in the preliminary results.

*Department's Position:* We disagree with petitioners' contention that the Department should base the level of trade on the starting price of CEP sales. As the Department has previously discussed (*See Wire Rod from France,* and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Thailand and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews,* 61 FR 35713 (July 8, 1996); *Proposed Regulations,* 61 FR at 7347), the Department believes that this position is not supported by the SAA, and that it is neither reasonable nor logical. The statute requires that comparisons between NV and EP or CEP are to be made, to the extent practicable, at the same level of trade. Section 773(a)(1)(B) of the Act.

In CEP cases, the starting price is not the basis for comparison. The comparison is based on the CEP, which is net of the CEP deductions. Thus, it is the level of trade of that comparison price (the CEP) that is relevant. If the starting price is used to determine the level of trade for CEP sales, the Department's ability to make meaningful comparisons at the same level of trade (or appropriate adjustments for differences in levels of trade) would be severely undermined in cases involving CEP sales. Using the starting price to determine the level of trade of both EP and CEP sales would result in a finding of different levels of trade for an EP and a CEP sale adjusted to a price that reflected the same selling functions. Moreover, using the adjusted CEP for establishing the level of trade is consistent with the purposes of the CEP adjustment; to determine what the sales price would have been had the transaction been an export price sale. *See Proposed Regulations* at 61 FR at 7347. Accordingly, we have followed our practice in *Wire Rod from France,* which specifies that the level of trade analyzed for EP sales is that of the starting price, and for CEP sales it is the level of trade of the price after the deduction of U.S. selling expenses and profit.

*Comment 12:* Petitioners assert that the Department should calculate dumping margins based on all sales made during the POR, regardless of when entries were made (before or after suspension of liquidation). Petitioners assert that this practice has been sustained by the Court of International Trade (see, *The Ad Hoc Committee of Southern California Producers of Gray Portland Cement v. United States,* 914 F. Supp. 535, 544 (1995) and *NSK Ltd.* v. *United States,* 825 F. Supp. 315, 320 (1993)). They further state that although the Department may not assess duties on CEP sales that entered prior to suspension of liquidation, the *Gray Portland Cement* case allows the Department to use those sales in the calculation of dumping margins.

Petitioners contend that the Department's preliminary decision to exclude from its analysis sales made during the POR of merchandise entered into the U.S. prior to suspension of liquidation has granted respondents a license to dump merchandise following issuance of the antidumping duty order in this case.

Petitioners argue that in the hearing of the previous review, counsel for respondents admitted that the respondents had restructured their business in an effort to avoid dumping liability. Petitioners assert that by linking sales with entries, respondents excluded a large part of the high margin sales from the dumping calculation.

Petitioners assert that there is an issue of potential price manipulation as their analysis reveals that respondents inconsistently priced CEP sales that entered the U.S. prior to suspension of liquidation when compared to POR sales. Specifically, they allege that gross unit prices differ in a number of instances for identical CEP products sold on the same day to the same customer off the same invoice. Petitioners argue that these sales from the same commercial invoice would constitute a package price to the customer. They allege that the respondents should not be permitted to avoid a finding of dumping by inconsistent pricing.

Further, petitioners state that their analysis indicates that the difference in the net prices cannot be explained by the difference in inventory carrying costs between the products.

Lastly, petitioners contend that given the evidence of differing prices on the same invoice for products sold in the POR, some of which entered both prior and after suspension of liquidation, the Department should reconsider its decision to exclude those sales that entered prior to suspension of liquidation. If the Department decides to exclude those sales, petitioners alternatively request that the Department average the two gross unit prices to determine the actual price the customer paid for the merchandise.

Respondents agree with the Department's decision to exclude merchandise proven to have entered the U.S. prior to suspension of liquidation. Respondents argue that the decision is legally correct. They further assert that the arguments raised by petitioners are identical to the arguments made in the first administrative review which the Department rejected. Respondents contend that there is no need for the Department to reconsider its decision.

Respondents also state that petitioners' allegations of inconsistent pricing and sales manipulation are devoid of substance, involve distorted analysis and ignore the verified facts. Respondents claim that petitioners' claims are flawed as they are based on three faulty assumptions: first, petitioners assume the Control Number (CONNUM) represents the product as sold in the U.S., whereas it designates the product as imported; second, petitioners are comparing different line items of an invoice and therefore comparing sales of different products; and third, petitioners performed a misleading comparison of net, rather than gross, prices.

Respondents note that the Department examined and rejected this issue in the first administrative review. Also, respondents assert that the Department examined invoices mentioned in petitioners' case brief and found no validity to petitioners' claim.

*Department's Position:* We agree with respondents. As we stated in *Wire Rod from France* and the preliminary results of this review, the exclusion of sales of merchandise entered prior to suspension of liquidation requires that a respondent must demonstrate, to the satisfaction of the Department, the linkage between the entry and the sale. (*See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Preliminary Results of Antidumping Duty Administrative Review,* 60 FR 42507 (1995) (the Department did not exclude certain sales because the respondent was unable to link the sales to specific pre-suspension entries)). This stringent requirement, coupled with the provisions on critical circumstances, eliminates any significant risk of using pre-suspension entries to manipulate or distort margins following the issuance of an order.

We disagree with petitioners' contention that linkage would encourage dumping as most producers would not have the necessary linkage information that would meet the

Department's requirements in a verification. In fact, the necessary linkage has been demonstrated in only one other case. (*See* High-Tenacity Rayon Filament Yarn, Preliminary Results of Antidumping Duty Administrative Review, 59 FR 32181 (June 22, 1994)).

We examined the issue of potential manipulation of prices and dumping margins throughout the review, including at our verifications of respondents. We found no evidence of ''paired sales,'' where the price of the sale that entered prior to suspension of liquidation was priced lower than a simultaneous sale of the same merchandise to the same customer. After examining the issue, we found no evidence that respondents were engaged in price manipulation with sales of pre-POR entries (see Final Analysis Memorandum). In the absence of price manipulation, and for the reasons discussed in *Wire Rod from France,* we have excluded sales of merchandise which entered the United States prior to the suspension of liquidation from the dumping margin calculation.

*Comment 13:* Petitioners argue that the Department should treat post-sale warehousing incurred by MAC as a direct selling expense. Petitioners state that respondents admitted that MAC incurs post-sale warehousing expenses in connection with staged-delivery sales, but failed to identify these costs as direct U.S. selling expenses. Petitioners contend that it is Departmental practice to treat post-sale warehousing expenses as direct selling expenses that must be deducted from U.S. price.

Respondents argue that petitioners' position that post-sale warehousing should have been reported as a direct selling expense is incorrect. Respondents state that they correctly reported their warehousing expenses according to the Department's questionnaire instructions. Respondents contend that the warehousing expenses do not fit the Department's criteria for direct selling expenses and are properly classified as indirect selling expenses.

*Department's Position:* We disagree with both petitioner and respondent, since warehousing is not a selling expense, either direct or indirect. Rather it is a movement expense and deducted from the starting price under section 772(c)(2)(A), as confirmed by the Statement of Administrative Action (SAA) (see H.R. Doc. 316, Vol. 1, 103d Cong., 2d sess. (1994) at 823).

*Comment 14:* Petitioners contend that the Department should treat costs incurred by Techalloy with respect to this antidumping proceeding as direct U.S. selling expenses. Petitioners argue that these were actual costs for sales of subject merchandise imported during the POR and that respondents did not include these costs in the direct or indirect selling expenses or in the valued-added general and administrative expenses for products that were further manufactured by Techalloy.

Respondents argue that there is no basis for the Department to treat administrative costs connected to an administrative review as direct selling expenses. Respondents contend that it is the Department's practice to exclude expenses related to participation in an antidumping proceeding from the margin calculation, and not treat them as a selling expense (*citing, Color Television Receivers From the Republic of Korea: Final Results of Administrative Review of Antidumping Review of Antidumping Duty Order*, 58 FR 50333, 50336 (September 27, 1993); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France: et al.: Final Results of Antidumping Duty Administrative Reviews,* 57 FR 28360, 28413 (June 24 1992); *Television Receivers, Monochrome and Color, From Japan: Final Results of Antidumping Duty Administrative Review,* 56 FR 38417, 38418 (August 13, 1991)).

Respondents also assert that the Department's practice has been upheld by the Court of International Trade (*citing Federal Mogul Corp.* v. *United States,* 813 F. Supp. 856 (Ct. Int'l Trade 1993) (''*Federal-Mogul*''); *Zenith Electronics Corp.* v. *United States,* 770 F. Supp. 648 (Ct. Int'l Trade 1991); *Daewoo Electronics Co. Ltd.* v. *United States,* 712 F. Supp. 931 (Ct. Int'l Trade 1989)).

*Department's Position:* We disagree with petitioners. In this review, we have followed the Department's policy from previous reviews, which the CIT sustained in *Daewoo Electronics.* We do not consider expenses incurred in connection with participating in an antidumping review to constitute expenses related to sales made during this POR. Such expenses are incurred to defend against an allegation of dumping. Accordingly, they are not expenses incurred in selling merchandise in the United States. Moreover, to deduct administrative review related expenses as selling expenses would effectively penalize respondents based on their participation in proceedings before the Department. Therefore, we have not deducted administrative review related expenses for the final results.

*Comment 15:* Petitioners allege that respondents failed to report U.S. inland freight from port to warehouse for certain U.S. sales.

Respondents contend that their U.S. freight expense was fully and properly reported in the questionnaire response. Furthermore, respondents argue that the Department's sales verification at Imphy confirmed the accuracy of the freight amounts and that no discrepancies were found.

*Department's Position:* We disagree with petitioners. We examined this issue at verification and confirmed the accuracy of the questionnaire response for freight. In addition, we found no evidence that respondents did not report freight amounts. Therefore, we have accepted the reported amounts for freight expense for the final results.

*Comment 16:* Petitioners contend that respondents reported erroneous amounts for freight revenues in respondents' questionnaire response. Petitioners assert that the reported sales terms are those generally applicable to the customer, rather than for the specific sale. Petitioners claim that the respondents' supplemental questionnaire response provided dubious explanations and raised serious questions as to the ''special services'' provided to customers and how the respondents recorded these costs. Petitioners contend that the Department should not accept respondents' reported freight revenues for the final results for two terms of sale given the serious problems associated with the reported freight revenue.

Respondents contend that there is no substance to petitioners' assertion that there are errors in respondents' reported freight revenue. Respondents assert that the sales terms that appear on the invoice and that are reported in the response are the normal sales terms for the customer because respondents' computer system only allows one sales term to be associated with a customer. Respondents note that the transactions listed by petitioners in their case brief are instances where the respondents accommodated a customer's special request to deliver merchandise using alternative transportation. Respondents contend that they bill the customer for the service and correctly reported this in the questionnaire response. Respondents also note that the Department examined this issue at verification and found no discrepancies.

*Department's Position:* We agree with respondents. We examined this issue at verification and found no evidence that respondents reported incorrect amounts for freight revenues. At verification, we selected and examined sales concerning

this issue that petitioner identified in their pre-verification comments to the Department. We found no discrepancies between respondents' submissions and their records. We also found no evidence to contradict respondents' claim in the supplemental questionnaire response that the terms of sale reported in the U.S. sales file are the normal sales terms for each customer and that respondents billed the customer for the cost of the alternative transportation source that was reported in the U.S. sales file as freight revenue. In addition, we agree with respondents that in cases where alternative transportation sources were used, the amount billed the customer appears as freight revenue on the U.S. sales file. Thus, for sales that used the alternative transportation, the freight revenue was greater than the expense. Consequently, we have used the reported freight revenue amounts for the final results.

*Comment 17:* Petitioners contend that the Department should revise its calculation of constructed value (CV) profit by excluding from the profit calculation those sales that were otherwise excluded from the Department's analysis as non-arm's length sales. Petitioners assert that the statute is mandatory in requiring the Department to calculate CV profit based on sales in the ordinary course of trade (*See* 19 U.S.C. 1677b(e)(2)(A)). Petitioners contend that transactions disregarded under section 773(f)(2) as non-arm's length sales, and transactions disregarded as below-cost, are explicitly defined as outside the ordinary course of trade (*See* 19 U.S.C. 1677(15)). Thus, they contend that section 773(e)(2)(A) prohibits the Department from using sales that are outside the ordinary course of trade in the CV profit calculation. In addition, petitioners argue that the calculation of profit is pursuant to section 773(e)(2)(A) and not section 773(e)(2)(B). They argue that in a recent determination, the Department indicated that while sales at below-cost prices might be included in the profit calculation when that calculation was undertaken pursuant to section 773(e)(2)(B) of the statute, sales that were otherwise excluded at below-cost prices could not be included in the profit calculation where section 773(e)(2)(A) of the statute applies (*See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review,* FR 61 56515, 56518 (November 1, 1996)). Accordingly, petitioners assert that the Department should exclude non-arm's length sales in the calculation of CV profit.

Respondents agree with petitioners that the Department erroneously included sales outside the ordinary course of trade, *e.g.,* non arm's-length sales in the CV profit calculation.

*Department's Position: We agree with both respondents and petitioners that we should exclude non-arm's length sales from the CV profit calculation.*

*Comment 18:* Petitioners contend that the Department should adjust respondents' reported net interest expenses so that long-term income is not deducted from total net interest expenses. Petitioners state that it is the Department's policy to calculate net interest expenses by subtracting short-term interest income from the total of short-term and long-term interest expenses. However, petitioners allege that the net interest expenses reported by respondents and used in the preliminary results, subtracted long-term interest income from total interest expenses.

Respondents had no rebuttal to this comment.

*Department's Position:* We agree with petitioners. It is the Department's policy in calculating net interest expense for COP to include interest expense relating to both long-and short-term borrowings and to reduce the amount of interest expense incurred by any interest income earned on short-term investments on its working capital (*See* Department of Commerce Questionnaire of March 21, 1996 at page D–20). Respondents' net interest expense reported to the Department included a deduction for long-term interest income; therefore, for the final results, the Department added the amount of long-term interest income to respondents' net interest expense figure.

*Comment 19:* Petitioners contend that the Department should revise respondents' general and administrative (G&A) expenses to include expenses recorded in the financial link account. Petitioners note that in the LTFV investigation, the Department found that costs listed in respondents' financial link account had not been included in the expenses reported, even though respondents could not identify or reconcile those costs and, therefore, the Department included the costs in the calculation of interest and G&A rates (*See Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France*, 58 FR 68865, 68874 (December 29, 1993)). Petitioners contend that it is the Department's policy where additional costs cannot be identified or reconciled, to include such costs in the calculation of COP and CV. Accordingly, petitioners urge the Department to revise the general and administrative expenses for Imphy and Ugine-Savoie to include the costs and expenses in the financial link account.

Respondents state that there is no evidence on the record to suggest that the account relates in any way to the subject merchandise and, therefore, there is no basis for the Department to include it in the G&A expenses. Respondents assert that they properly reported all G&A expenses and that the Department examined this issue at verification. They further contend that the ''Financial Link Account'' is a function of the consolidation process among the several hundred companies in the Usinor-Sacilor group. Thus, respondents argue that the account does not reflect an expense attributable to a particular company and therefore there are no grounds for imputing the balance in the account to respondents' cost for subject merchandise.

*Department's Position:* We agree with petitioners. As we did in the LTFV Final Determination, we have included the amount in the financial link account in the calculation of the general and administrative expenses. At verification, respondents stated that due to the large number of companies submitting information to the parent company, neither Usinor-Sacilor nor Imphy could segregate Imphy's costs from the costs of the other companies in the Usinor-Sacilor group that were also included in the financial link account. Since these costs could not be specifically identified or reconciled, it is possible that they relate to the subject merchandise. It is the Department's practice to include all costs relevant to the subject merchandise in the calculation of COP and CV; therefore we included these additional costs in the calculation of the G&A rates (*See Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France,* 58 FR 68885, 68874 (December 29, 1993)).

*Comment 20:* Petitioners contend that the Department should adjust the cost of manufacture for subcontracted coating work by an affiliated party. Petitioners note that at verification, the Department found that Imphy subcontracts both remelting and coating to affiliated party suppliers. Petitioners note that the Department found that Imphy failed to report cost variances and GS&A expenses for the affiliated remelter and adjusted remelting costs accordingly. Petitioners state that given the error found in these costs, and given respondents' failure to demonstrate the arm's-length nature of the coating costs reported, the Department should assume that subcontracted coating costs are

similarly understated and adjust them accordingly for the final results.

Petitioners argue that adjustment of Imphy's coating expenses for cost variances and SG&A expenses would be consistent with law. In support of their position, petitioners cite decisions by the Court of International Trade in *NSK Ltd.* v. *United States,* 910 F. Supp. 663, 671 (1995) and *Micron Technology* v. *United States,* 893 F. Supp. 21, 37 (1995).

Respondents argue that under section 773(f)(2) the Department may examine the arm's-length nature of transactions between affiliated parties. Respondents contend that such an examination is discretionary and the statute does not require the Department to do so. Respondents assert that the coating work performed by the affiliated party did not represent a ''major input'' for which cost information is pertinent pursuant to section 773(f)(3). Respondents note that the coating amount as a percentage of the cost of goods sold is extremely small.

Respondents argue that since they provided all requested information concerning coating and because the Department did not request that respondents provide further coating information, there is no basis for the Department to adjust the price Imphy paid for the subcontracted work.

*Department's Position:* We agree with respondents. During the cost of production verification, the Department found that the prices that respondents paid to an affiliate for subcontracted remelting did not include the affiliated party's cost variance expenses nor the affiliated party's selling, general and administrative expenses and, for that reason, an adjustment was made to the reported remelting costs. *See* Comment 3.

However, the coating is performed by another affiliated company. Respondents reported that this affiliated party performed coating services at arm's-length prices. We examined the issue of arm's-length prices in depth at verification. At verification we found that, other than the affiliated party's prices for remelting services, all other affiliated party prices for inputs were comparable to arm's-length prices (for a more detailed discussion of this issue, please see the public version of the Cost of Production Verification Report of Imphy, S.A., October 7, 1996, at 10–15).

*Comment 21:* Petitioners allege that the Department's computer margin calculation program did not convert respondents' reported U.S. repacking expenses from a per-pound basis to a per kilogram basis.

Respondents did not comment on this issue.

*Department's Position:* We agree with petitioners and have properly converted the repacking expense for the final results.

*Comment 22:* Petitioners contend that the Department failed to deduct U.S. commissions in the calculation of U.S. price for respondents' CEP and CEP further manufactured (CEP/FM) sales.

Respondents agree with petitioners. However, respondents contend that petitioners' proposed solution contains three typographical errors in the variable names.

*Department's Position:* We agree with petitioners and will deduct U.S. commissions paid to unaffiliated selling agents for CEP and CEP/FM sales for the final results. We also agree with respondents' assertion concerning the typographical errors and we will make the necessary corrections for the final results.

*Comment 23:* Petitioners assert that although the Department adjusted the cost of manufacture for remelting services, the Department failed to adjust respondents' cost of manufacture (COM) for CV for the remelting services. Petitioners request that the Department revise respondents' COM for CV using the programming language used to adjust the COM for home market sales.

Respondents assert that in the event that the Department disagrees with respondents and determines that it is proper to adjust COM for products remelted by the affiliated party, they recognize that it would also be appropriate similarly to adjust the reported cost of manufacture for constructed value purposes.

*Department's Position:* We agree with petitioners and have revised respondents' COM for CV for the final results.

*Comment 24:* Petitioners note that during verification the Department found that there were two experimental heat sales in the respondents' home market sales database. Petitioners note that the experimental heat sales were incorrectly identified as secondary material in the respondents' May 21, 1996 submission. Petitioners request that the Department correct respondents' coding for these two sales for the final results.

Respondents agree with petitioners concerning the experimental heat sales. However, respondents contend that the petitioners' proposed programming change to the computer program is incorrect. Respondents request that the Department use the computer code submitted in their rebuttal brief.

*Department's Position:* We agree that the two sales from the experimental heat should be classified as prime material. We also agree with respondents concerning the computer code needed to correct the error and have corrected this error in our final results.

*Comment 25:* Petitioners assert that the Department should recalculate the G&A and interest expenses for home market COP and CV to reflect the changes the Department made to respondents' COM. They note that the Department revised respondents' COM for understating certain costs by failing to account for total remelting expenses. Therefore, they contend that G&A and interest expenses for COP and CV must be revised accordingly.

Respondents state that in the event that the Department disagrees with respondents and determines that it is proper to adjust COM for products remelted by the affiliated party, they recognize that it is also proper to recalculate G&A and interest amounts, to ensure that these items remain at the same percentage of the revised COM.

However, respondents assert that petitioners' proposed computer language corrections are wrong and suggest modifications.

*Department's Position:* We agree with petitioners and have revised the G&A and interest expenses for COP and CV. We also agree with respondents concerning the computer coding to correct the error and have included it in the final results.

*Comment 26:* Petitioners allege that the Department made a data entry error by misspelling one of respondents' product codes in the computer program.

*Department's Position:* We agree and have corrected this error for the final results.

Final Results of Review

As a result of our review, we have determined that the following margins exist:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Imphy/Ugine-Savoie ..... | 1/1/95–12/31/95 | 6.53 |

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon

publication of this notice of final results of review for all shipments of certain stainless steel wire rods from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be 24.51 percent for stainless steel wire rods, the all others rate established in the LTFV investigation. See *Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Wire Rods from France* (59 FR 4022, January 28, 1994).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 7, 1997.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 97–3913 Filed 2–14–97; 8:45 am]

BILLING CODE 3510–DS–P

## National Institute of Standards and Technology

**[Docket No. 950420110–6167–02]**

**RIN 0693–XX06**

## Approval of Federal Information Processing Standards Publication (FIPS) 196, Entity Authentication Using Public Key Cryptography

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS Publication 196, Entity Authentication Using Public Key Cryptography.

**SUMMARY:** On June 6, 1995, notice was published in the Federal Register (60 FR 29830–29832) that a Federal Information Processing Standard for Public Key Cryptographic Entity Authentication mechanisms was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this standard were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the standard as a Federal Information Processing Standards Publication, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

This FIPS contains two sections: (1) an announcement section which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

**EFFECTIVE DATE:** This standard becomes effective April 6, 1997.

**ADDRESSES:** Interested parties may purchase copies of this standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Foti, telephone (301) 975–5237, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: January 30, 1997.

Elaine Bunten-Mines,

*Director, Program Office.*

Federal Information Processing Standards Publication 196

February 18, 1997.

Announcing—Entity Authentication Using Public Key Cryptography

Federal Information Processing Standards (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

*1. Name of Standard.* Entity Authentication Using Public Key Cryptography (FIPS PUB 196).

*2. Category of Standard.* Computer Security, *Subcategory* Access Control.

*3. Explanation.* This standard specifies two challenge-response protocols by which entities in a computer system may authenticate their identities to one another. These protocols may be used during session initiation, and at any other time that entity authentication is necessary. Depending on which protocol is implemented, either one or both entities involved may be authenticated. The defined protocols are derived from an international standard for entity authentication based on public key cryptography, which uses digital signatures and random number challenges.

Authentication based on public key cryptography has an advantage over many other authentication schemes because no secret information has to be shared by the entities involved in the exchange. A user (claimant) attempting to authenticate oneself must use a private key to digitally sign a random number challenge issued by the verifying entity. This random number is a time variant parameter which is unique to the authentication exchange. If the verifier can successfully verify the signed response using the claimant's public key, then the claimant has been successfully authenticated.

*4. Approving Authority.* Secretary of Commerce.

*5. Maintenance Agency.* Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

*6. Cross Index.*

a. FIPS PUB 140–1, Security Requirements for Cryptographic Modules.

b. FIPS PUB 171, Key Management Using ANSI X9.17.

c. FIPS PUB 180–1, Secure Hash Standard.

d. FIPS PUB 186, Digital Signature Standard.

e. FIPS PUB 190, Guideline for the Use of Advanced Authentication Technology Alternatives.

f. ANSI X9.17–1985, Financial Institution Key Management (Wholesale).

g. ISO/IEC 9798–1:1991, Information technology—Security techniques—Entity authentication mechanisms—Part 1: General model.

h. ISO/IEC 9798–3:1993, Information technology—Security techniques—Entity authentication mechanisms—Part 3: Entity authentication using a public key algorithm.

Other NIST publications maybe applicable to the implementation and use of this standard. A list (NIST Publications List 91) of currently available computer security publications, including ordering information, can be obtained from NIST.

*7. Applicability.* This standard is applicable to all Federal departments and agencies that use pubic key based authentication systems to protect unclassified information within computer and digital telecommunications systems that are not subject to Section 2315 of Title 10, U.S. Code, or Section 3502(2) of Title 44, U.S. Code. This standard shall be used by all Federal departments and agencies in designing, acquiring and implementing public key based, challenge-response authentication systems at the application layer within computer and digital telecommunications systems. This includes all systems that Federal departments and agencies operate or that are operated for them under contact. In addition, this standard may be used at other layers within computer and digital telecommunications systems.

This standard may be adopted and used by non-Federal Government organizations. Such use is encouraged when it is either cost effective or provides interoperability for commercial and private organizations.

*8. Applications.* Numerous applications can benefit from the incorporation of entity authentication based on public key cryptography, when the implementation of such technology is considered cost-effective. Networking applications that require remote login will be able to authenticate clients who have not previously registered with the host, since secret material (e.g., a password) does not have to be exchanged beforehand. Also, point-to-point authentication can take place between users who are unknown to one another. The authentication protocols in this standard may be used in conjunction with other pubic key-based systems (e.g., a public key infrastructure that uses public key certificates) to enhance the security of a computer system.

*9. Specifications.* Federal Information Processing Standard (FIPS) 196, Entity Authentication Using Public Key Cryptography (affixed).

*10. Implementations.* The authentication protocols described in this standard may be implemented in software, firmware, hardware, or any combination thereof.

*11. Export Control.* Implementations of this standard are subject to Federal Government export controls as specified in Title 15, Code of Federal Regulations, Parts 768 through 799. Exporters are advised to contact the Department of Commerce, Bureau of Export Administration, for more information.

*12. Implementation Schedule.* This standard becomes effective April 6, 1997.

*13. Qualifications.* The authentication technology described in this standard is based upon information provided by sources within the Federal Government and private industry. Authentication systems are designed to protect against adversaries (e.g., hackers, organized crime, economic competitors) mounting cost-effective attacks on unclassified government or commercial data. The primary goal in designing an effective security system is to make the cost of any attack greater than the possible payoff.

While specifications in this standard are intended to maintain the security of an authentication protocol, conformance to this standard does not guarantee that a particular implementation is secure. It is the responsibility of the manufacturer to build the implementation of an authentication protocol in a secure manner. This standard will be reviewed every five years in order to assess its adequacy.

*14. Waivers.* Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may re-delegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive classified portions clearly identified, shall be sent to: National Institute of Standards and Technology, ATTN: FIPS Waiver Decisions, Building 820, Room 509, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Section 552(b), shall be part of the procurement documentation and retained by the agency.

*15. Where to Obtain Copies.* Copies of this publication are available for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 196 (FIPS PUB 196), and identify the title. When microfiche is desired, this should be specified. Payment may be made by check, money order, credit card, or deposit account.

[FR Doc. 97–3824 Filed 2–14–97; 8:45 am]

BILLING CODE 3510–CN–M

## National Oceanic and Atmospheric Administration

**[I.D. 020797A]**

## Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene public meetings.

**DATES:** The meetings will be held on March 10–13,1997.

**ADDRESSES:** These meetings will be held at the Holiday Inn on the Beach, 365 East Beach Boulevard, Gulf Shores, Alabama; telephone: 334–948–6191.

*Council address*: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

**SUPPLEMENTARY INFORMATION:**

Council

*March 12*

*8:30 a.m.*—Convene.

*8:45 a.m. - 11:30 a.m.*—Receive public testimony on Vermilion Snapper Total Allocable Catch (TAC).

*1:00 p.m. - 2:30 p.m.*—Receive a report of the Reef Fish Management Committee.

*2:30 p.m. - 3:30 p.m.*—Receive a report of the Scientific and Statistical (SSC) Selection Committee. (CLOSED SESSION).

*3:30 p.m. - 5:00 p.m.*—Receive a report of the Advisory Panel (AP) Selection Committee. (CLOSED SESSION).

*March 13*

*8:30 a.m. - 9:30 a.m.*—Receive a report of the Shrimp Management Committee.

*9:30 a.m. - 9:45 a.m.*—Receive a report of the Habitat Protection Committee.

*9:45 a.m. - 10:15 a.m.*—Receive a report of the Law Enforcement Committee.

*10:15 a.m. - 10:45 a.m.*—Receive a report of the Administrative Policy Committee.

*10:45 a.m. - 11:00 a.m.*—Receive a report of the Stone Crab Management Committee.

*11:00 a.m. - 11:15 a.m.*—Receive a report on the South Atlantic Fishery Management Council Liaison.

*11:15 a.m. - 11:30 a.m.*—Receive Enforcement Reports.

*11:30 a.m. - 11:45 a.m.*— Receive Director's Reports.

*11:45 p.m. - 12:00 noon*—Other business to be discussed.

Committees

*March 10*

*9:30 a.m. - 12:30 p.m.*—Convene the AP Selection Committee. (CLOSED SESSION).

*1:30 p.m. - 4:00 p.m.*—Convene the SSC Selection Committee. (CLOSED SESSION).

*4:00 p.m. - 5:30 p.m.*—Convene the Administrative Policy Committee.

*March 11*

8:00 a.m. - 11:30 p.m.—Convene the Reef Fish Management Committee.

*12:30 p.m. - 4:00 p.m.*—Convene the Shrimp Management Committee.

*4:00 p.m. - 4:45 p.m.*—Convene the Stone Crab Management Committee.

*4:45 p.m. - 5:30 p.m.*—Convene the Habitat Protection Committee.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by March 3, 1997.

Dated: February 11, 1997.

Bruce Morehead,

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–3951 Filed 2–14–97; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title and OMB Control Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing, and the Clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions; OMB Number 0704–0321.

*Type of Request:* Extension of a currently approved collection.

*Number of Respondents:* 414.

*Responses Per Respondent:* 12.

*Annual Responses:* 4,968.

*Average Burden Per Response:* 30 minutes.

*Annual Burden Hours:* 7,452 (includes 4,968 recordkeeping hours).

*Needs and Uses:* The Arms Export Control Act requires, in the absence of a special Presidential Finding, that the U.S. Government purchase military equipment for foreign governments using foreign funds and without any charge to appropriated funds. In order to comply with this requirement, the Government needs to know how much to charge each country as progress payments are made for foreign military sales (FMS) purchases. The Government can only obtain this information from the contractor preparing the progress payment request. The clause at 252.232–7002 requires contractors, whose contracts include FMS requirements, to submit a progress payment request with a supporting schedule which clearly distinguishes the contract's FMS requirements from U.S. contract requirements. The Government uses this information to determine how much of each country's funds to disburse to the contractor.

*Affected Public:* Business or other for profit; not for profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: February 12, 1997.

Patricia L. Toppings,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–3881 Filed 2–14–97; 8:45 am]

**BILLING CODE 5000–04–M**

### Defense Science Board Task Force on Underground Facilities

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Underground Facilities will meet in closed session on March 12–13, 1997 at U.S. Strategic Command, Omaha, Nebraska.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will address the threat to U.S. interests posed by the growth of underground facilities in unfriendly nations. The Task Force should investigate technologies and techniques to meet the international security and military strategy challenges posed by these facilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: February 12, 1997.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–3879 Filed 2–14–97; 8:45 am]

**BILLING CODE 5000–04–M**

### Defense Science Board Task Force on Stealth Technology and Future S&T Investments

**ACTION:** Notice of advisory committee meetings.

**SUMMARY:** The Defense Science Board Task Force on Stealth Technology and Future S&T Investments will meet in closed session on March 19–20, April 1–2, and April 28–29, 1997 at Science Applications International Corporation, 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology

on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will explore the relationship between low observable and electronic warfare technologies in providing future weapon system survivability.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: February 12, 1997.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–3880 Filed 2–14–97; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF EDUCATION

### Office of Educational Research and Improvement (OERI), National Institute on Educational Governance, Finance, Policy-Making, and Management

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed priority for fiscal year 1997.

**SUMMARY:** The Secretary proposes a priority for a National Research and Development Center. The Secretary takes this action to support research on policymaking and policies to support excellence in teaching.

**DATES:** Comments must be received on or before March 20, 1997.

**ADDRESSES:** All comments concerning this proposed priority should be addressed to Ron Anson, U.S. Department of Education, 555 New Jersey Avenue, NW., room 608F, Washington, DC 20208–5510. Comments can be faxed to Mr. Anson at (202) 219–2159 or e-mailed through the internet to: ron__anson@ed.gov.

**FOR FURTHER INFORMATION CONTACT:** Ron Anson, telephone: (202) 219–2214. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Office of Educational Research and Improvement, authorized under Title IX of Public Law 103–227 (20 U.S.C. section 6001 *et seq.*), supports educational research and development activities. The National Institute on Educational Governance, Finance, Policy-Making, and Management is one of five research institutes that carry out coordinated and comprehensive programs of research, development, evaluation, and dissemination activities designed to provide research-based leadership for the improvement of education.

The National Institute on Educational Governance, Finance, Policy-Making, and Management supports a range of research, development, and dissemination activities focused on core issues in education. Activities are carried out by national research and development centers, field-initiated studies, and a variety of directed research, development, and dissemination activities.

The Secretary believes that increasing the capacity of the nation's education system to improve the quality of education depends on knowledge generated by an enduring program of education research and development. Knowledge gained from education research and development can help guide the national investment in education and support local and State improvement efforts. Because they carry out sustained, long-term research and development, centers are a primary mechanism for pursuing new knowledge about education. Center awards are made to institutions of higher education, institutions of higher education in consort with public agencies or non-profit organizations, and interstate agencies established by compact that operate subsidiary bodies to conduct postsecondary education research and development.

The Secretary invites comments on the priority described in this notice. Prior to this announcement and in conjunction with planning for Educational Research and Development Center competitions in 1996, OERI engaged in a series of meetings, regional hearings, and Federal Register notices that solicited advice from parents, teachers, administrators, policymakers, business people, researchers, and others to identify the most needed research and development activities. Following these activities and subsequent research priorities planning meetings in which OERI engaged, OERI prepared this notice of proposed priority. The subject matter of this proposed priority has been reviewed by OERI's National Research Policy and Priorities Board, whose mandate includes the development of a Research Priorities Plan.

The Secretary will announce the final priority in a notice in the Federal Register. The final priority will be determined by responses to this notice and other considerations of the Department. This notice does not preclude the Secretary from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the Federal Register concurrent with or following publication of the notice of final priority.

Proposed Priority: Policy and Teaching Excellence

Under 34 CFR 75.105(c)(3) the Secretary will give an absolute preference to applications that meet the following specific priority area. The Secretary intends to fund only one application that meets the priority listed below. Funding this priority will depend on the availability of funds, the nature of the final priority, and the quality of applications received. The Secretary proposes to support a national center to conduct research and development in the priority area of improving policymaking and policy structures to achieve excellence in teaching.

A: This center must:

(1) Conduct a coherent, sustained program of research and development to address problems and issues of national significance in the specific priority area, using a well-conceptualized and theoretically sound framework;

(2) Contribute to the development and advancement of theory in the specific priority area;

(3) Conduct scientifically rigorous studies capable of generating findings that contribute substantially to understanding the field;

(4) Conduct work of sufficient size, scope, and duration to produce definitive guidance for improvement efforts and future research;

(5) Address issues of both equity and excellence in education for all students in the specific priority area; and

(6) Document, report, and disseminate information about its research findings and other accomplishments in ways that will facilitate effective use of that information by decisionmakers and others as appropriate.

B: In carrying out its program of work, the center must also:

(1) Conduct research and development on the full range of policy issues relevant to teaching excellence and other associated policy issues;

(2) Conduct a program of research and development that will aid policymakers throughout the Nation at all levels of government and at all levels of the

educational system improve policies and policy decisions, as well as policy formulation, implementation, and evaluation processes, in order to achieve the goal of teaching excellence and ensure continuous efforts related to that goal;

(3) Examine the effects that different policies for fostering or sustaining teaching excellence, or both, have on continuous school improvement, teacher performance, and student learning;

(4) Examine the interactions of various policies affecting teacher performance and teaching excellence and the costs and benefits of different policies;

(5) Examine the role of policy coordination and alignment in the creation of an overall policy structure that supports excellence in teaching; and

(6) If appropriate, investigate education policies in other nations as they relate to and can inform education policies in the United States.

Post-Award Requirements

The Secretary proposes the following post-award requirements consistent with the Educational Research, Development, Dissemination and Improvement Act of 1994, cited earlier in this Notice (20 U.S.C. section 6001 *et seq.*). A grantee receiving a center award must:

(a) Collaborate with OERI and appropriate clients in identifying significant new issues and provide OERI with information about center projects and products and other appropriate research information so that OERI can monitor center progress and maintain its inventory of funded research projects. This information must be provided through media that include an electronic network;

(b) Reserve five percent of each budget period's funds to support activities that fall within the center's priority area, are designed and mutually agreed to by the center and OERI, and enhance OERI's ability to carry out its mission. These activities may include developing research agendas, conducting research projects collaborating with other federally-supported entities, and engaging in research agenda setting and dissemination activities; and

(c) Provide yearly summaries of findings usable by education decisionmakers and practitioners and others as appropriate and, at the end of the award period, synthesize the findings and advances in knowledge that resulted from the center's program of work and describe the potential impact on the improvement of American education, including any observable impact to date.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. Comments will be available for public inspection, during and after the comment period, in Room 608A, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Thursday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance Number (84.308B) Educational Research and Development Centers Program)

Program Authority: Pub.L. 103–227, Title IX (20 U.S.C. 6031).

Dated: February 11, 1997.

Marshall Smith,

*Acting Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 97–3906 Filed 2–14–97; 8:45 am]

**BILLING CODE 4000–01–P**

## National Committee on Foreign Medical Education and Accreditation; Meeting

**AGENCY:** National Committee on Foreign Medical Education and Accreditation, Education.

**ACTION:** Amendment of notice of meeting.

**SUMMARY:** This notice amends the notice published on January 28, 1997, Volume 62, page 4038. The purpose of this amendment is to change the time that the meeting will be convened on March 3, 1997, from 9 a.m. to 1:30 p.m. The location and matters to be considered are not changed.

**DATES AND TIMES:** Monday, March 3, 1997, 1:30 p.m. to 5:30 p.m., and Tuesday, March 4, 1997, from 9 a.m. to 5:30 p.m.

**FOR FURTHER INFORMATION CONTACT:**

Carol F. Sperry, Executive Director, National Committee on Foreign Medical Education and Accreditation, 7th and D Streets, SW., Room 3905, ROB #3, Washington, DC 20202–7563. Telephone: (202) 260–3636.

David A. Longanecker,

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 97–3872 Filed 2–14–97; 8:45 am]

**BILLING CODE 4000–01–M**

## DEPARTMENT OF ENERGY

## Aluminum Partnership Solicitation for Financial Assistance

**AGENCY:** Idaho Operations Office, DOE.

**ACTION:** Notice of solicitation for financial assistance number DE-PS07–97ID13514: aluminum partnerships solicitation.

**SUMMARY:** The U.S. Department of Energy (DOE), Idaho Operations Office (ID) is seeking applications for cost-shared research and development of technologies which will enhance economic competitiveness, and reduce energy consumption and environmental impacts for the aluminum industry. The research is to address research priorities identified by the aluminum industry in the ''Aluminum Technology Roadmap Workshop Report'' (November 1996) for the aluminum sector areas of Primary Aluminum Production, Semi-Fabricated Products, and Finished Products. Approximately $2,000,000 in federal funds is available to fund the first year of selected research efforts. DOE anticipates making three or four cooperative agreement awards for projects with durations of four years or less. A minimum 30% non-federal cost share is required for research and development projects. A minimum 50% non-federal cost share is required for demonstration projects. Collaborations between industry, national laboratory, and university participants are encouraged.

**FOR FURTHER INFORMATION CONTACT:** Linda Hallum, Contract Specialist; Procurement Services Division; U.S. DOE, Idaho Operations Office, 850 Energy Drive, MS 1221, Idaho Falls, ID 83401–1563; telephone (208) 526–5545.

**SUPPLEMENTARY INFORMATION:** The statutory authority for the program is the Energy Policy Act of 1992 (Pub. L. 102–486, as amended by Pub. L. 103–437 on November 2, 1994). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.078. The solicitation text is expected to be posted on the ID Procurement Services Division home page on or about February 27, 1997, and may be accessed using Universal Resource Locator address http://www.inel.gov/doeid/solicit.html. Application package forms will not be included on the home page and should be requested from the contract specialist. Requests for application packages must be written. Include company name, mailing address, point of contact, telephone number, and fax number. Write to the contract specialist at the address above, via fax number

(208) 526–5548, or via email to hallumla@inel.gov.

Issued in Idaho Falls, Idaho, on February 10, 1997.

R. Jeffrey Hoyles,

*Director, Procurement Services Division.*

[FR Doc. 97–3873 Filed 2–14–97; 8:45 am]

BILLING CODE 6450–01–P

## Environmental Management Site-Specific Advisory Board, Pantex Plant

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas.

**DATE AND TIME:** Tuesday, February 25, 1997: 9:00 a.m.–1:30 p.m.

**ADDRESS:** Carson County Square House Museum, Panhandle, Texas.

**FOR FURTHER INFORMATION CONTACT:** Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

9:00 a.m. Welcome—Agenda Review—Approval of Minutes
9:10 a.m. Co-Chair Comments
9:20 a.m. Air Monitoring Discussion/Recommendation
10:20 a.m. '98/'99 Budget Discussion—General Overview
11:00 a.m. Updates—Occurrence Reports
11:30 a.m. Break
12:00 p.m. Task Force Reports
—Transition
—Environmental Restoration
12:20 p.m. Update, Agency for Toxic Substances and Disease Registry
1:05 p.m. Subcommittee Reports
—Nominations & Membership
—Policy & Personnel
1:30 p.m. Adjourn

*Public Participation:* The meeting is open to the public, and public comment will be invited throughout the meeting. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10 pm, Monday through Thursday; 7:45 am to 5 pm on Friday; 8:30 am to 12 noon on Saturday; and 2 pm to 6 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9 am to 7 pm on Monday; 9 am to 5 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC, on February 12, 1997.

Rachel M. Samuel,

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 97–3877 Filed 2–14–97; 8:45 am]

BILLING CODE 6450–01–P

## Environmental Management Site-Specific Advisory Board, Monticello Site

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Board Committee Meeting: Environmental Management Site-Specific Advisory Board, Monticello Site.

**DATE AND TIME:** Tuesday, February 18, 1997, 7 p.m.—9 p.m.

**ADDRESS:** San Juan County Courthouse, 2nd Floor Conference Room, 117 South Main, Monticello, Utah 84535.

**FOR FURTHER INFORMATION CONTACT:** Audrey Berry, Public Affairs Specialist, Department of Energy Grand Junction Projects Office, PO Box 2567, Grand Junction, CO, 81502 (303) 248–7727.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to advise DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:* Discussion on the Agency for Toxic Substances and Disease Report.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Audrey Berry's office at the address or telephone number listed above. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Audrey Berry, Department of Energy Grand Junction Projects Office, P.O. Box 2567, Grand Junction, CO 81502, or by calling her at (303) 248–7727.

Issued at Washington, DC on February 12, 1997.

Rachel M. Samuel,

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 97–3878 Filed 2–14–97; 8:45 am]

BILLING CODE 6450–01–P

## Office of Energy Efficiency and Renewable Energy

## Metal Casting Industrial Advisory Board (IAB) Meeting

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting: Metal Casting Industrial Advisory Board (IAB).

**DATES:** March 6, 1997—8:00 am–5:00 pm; March 7, 1997—8:00 am–3:00 pm.

**ADDRESS:** American Foundrymen's Society, Inc. (AFS), 505 State Street, Des Plaines, IL 60016–8399.

**FOR FURTHER INFORMATION CONTACT:** Harvey C. Wong, U.S. Department of Energy, Office of Industrial Technologies, EE–20, 1000 Independence Avenue, SW., Washington, DC 20585, No. 202–586–9235, E-mail: harvey.wong@hq.doe.gov

**SUPPLEMENTARY INFORMATION:** Purpose of the Committee: The Metal Casting Industrial Advisory Board serves to provide guidance and oversight of research programs provided under the Metal Casting Competitiveness Research Program and to recommend to the Secretary of Energy new or revised program activities and Metal Casting Research Priorities.

Tentative Agenda for March 6, 1997 (Day 1)

8:00a Welcome and Introductions—Harvey C. Wong
8:10a Metal Casting Competitiveness Research Program (MCCRP) history and review process—Harvey C. Wong
8:30a Cast Metals Coalition (CMC) Process—Dennis Allen
9:00a Technical Review Process—AFS—Joe Santner
9:30a Technical Review Process—North American Die Casting Association (NADCA)—Steve Udvardy
10:00a Break
10:15a Technical Review Process—Steel Founder's Society of America (SFSA)—Malcolm Blair
10:45a Input from the floor and Industrial Advisory Board Discussion
11:40a FY97 Projects recommended by the Cast Metals Coalition—AFS
12:00n Lunch (On your own)
1:00p Continue presentation of FY97 projects recommended by the Cast Metals Coalition—CMC–AFS
3:00p Break
3:55p Presentation of FY97 projects recommended by CMC–SFSA
4:55p Additional comments from the floor and IAB discussion
5:30p Adjourn

Tentative Agenda for March 7, 1997 (Day 2)

8:00a Welcome and Introductions—Harvey C. Wong
8:05a Continue presentation of FY97 projects recommended by CMC–SFSA
10:05a Break
10:20a Presentation of FY97 projects recommended by CMC–NADCA
12:00n Lunch
1:00p Continue presentation of FY97 projects recommended by CMC–NADCA
1:40p Input from the floor and recommendations from IAB
2:30p Comments & Wrap-up
3:00p Adjourn

A final agenda will be available at the meeting.

*Public Participation:* The meeting is open to the public. The Chairperson of the Board is empowered to conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to the agenda items should contact Harvey C. Wong at the address or telephone number listed above. Requests must be received at least five (5) days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. Written statements may be filed with the Committee either before or after the meeting.

*Transcript:* Available for public review and copying at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 AM and 4 PM, Monday through Friday, except Federal holidays.

Issued at Washington, DC, on February 11, 1997.

Christine A. Ervin,

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 97–3875 Filed 2–14–97; 8:45 am]

**BILLING CODE 6450–01–P**

## Office of Energy Research

## DOE/NSF Nuclear Science Advisory Committee; Meeting

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is given of a meeting of the DOE/NSF Nuclear Science Advisory Committee.

**DATE:** Wednesday, February 26, 1997, 9 a.m. to 5 p.m.

**ADDRESS:** 5th Floor Conference Room, Suite 500, Portals Building, 1250 Maryland Avenue, S.W., Lawrence Berkeley National Laboratory-Washington Office, Washington, D.C. 20024.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Cathy A. Hanlin, Division of Nuclear Physics, U.S. Department of Energy, ER–23, GTN Germantown, Maryland 20874–1290, Telephone Number: 301–903–3613.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* To advise the Department of Energy and the National Science Foundation on scientific priorities within the field of basic nuclear science research.

*Tentative Agenda:*

Wednesday, February 26, 1997

- Introduction and Logistics (D. Hendrie)
- Statement by the Chairman (Claus-Konrad Gelbke)
- Meet with Peter Rosen
- Status Report of DOE (D. Hendrie)
- Status Report of NSF (J. Lightbody)
- Special Emphasis Panel Review of NSF Program (K. Kemper)
- Discussion of NSF Program
- Report on Megascience Nuclear Physics Working Group (D. Hendrie)
- Report on National Academy of Sciences Panel on Nuclear Physics (J. Schiffer)
- Discussion of Participation and Membership in International Committee on Nuclear Physics
- Discussion of Future Directions in Hadronic Nuclear Physics
- Performance Measure on DOE Conformance with Scientific Priorities in Long Range Plan
- Public Comment

*Public Participation:* The meeting is open to the public. Members of the public who wish to make oral statements pertaining to agenda items should contact Cathy Hanlin at the address or telephone number listed above. Requests to make oral statements must be received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on February 12, 1997.

Rachel M. Samuel,

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 97–3876 Filed 2–14–97; 8:45 am]

BILLING CODE 6450–01–P

## Federal Energy Regulatory Commission

**[Docket No. CP97–218–000]**

### Algonquin Gas Transmission Company; Notice of Request Under Blanket Authorization

February 11, 1997.

Take notice that on January 31, 1997, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, MA 02135 filed in Docket No. CP96–797–000 a request pursuant to §§ 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for approval and permission to construct and operate a delivery tap for New York State Electric and Gas Corporation (NYSEG), under the blanket certificate issued in Docket No. CP87–317–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Algonquin states that it proposes to construct and operate a delivery tap in Somers, New York. Algonquin further states that it will construct two taps, metering facilities and associated auxiliary facilities at an estimated cost of $211,000. It is indicated that NYSEG will pay all costs for the facilities installed and will construct all non-jurisdictional facilities located downstream of those constructed by Algonquin. Algonquin asserts that it does not propose to increase the Maximum Daily Delivery Obligation under firm service agreements between Algonquin and NYSEG.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–3853 Filed 2–14–97; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP96–213–002]**

### Columbia Gas Transmission Corporation; Notice of Compliance Filing

February 11, 1997.

Take notice that on February 6, 1997, Columbia Gas Transmission Corporation (Columbia) filed the following revised tariff sheet to its FERC Gas Tariff, Second Revised volume No. 1 (Tariff) with a proposed effective date of February 6, 1997:

Fourth Revised Sheet No. 282

Columbia states that the purpose of this filing is to comply with the Commission's January 16, 1997 order in this proceeding. See *Columbia Gas Transmission Corp.*, 78 FERC ¶61,030 (1997). Therein the Commission held that Columbia's General Terms and Conditions (GTC) Section 4 (Auctions of Available Firm Service) of the Tariff be clarified to reflect its application to not only existing capacity that becomes available as a result of terminating firm service agreements, but also to that existing capacity which otherwise becomes available. Consequently, Columbia has clarified this application of Section 4 by adding language to Section 4.2 which governs the award of such capacity.

Columbia states that copies of its filing are available for inspection at its offices at 1700 MacCorkle Avenue. S.E., Charleston, West Virginia and 700 Thirteenth Street, N.W., Suite 900, Washington, D.C., and have been mailed to all parties in this proceeding, firm and interruptible customers, and affected state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–3849 Filed 2–14–97; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. MG97–9–000]**

### El Paso Natural Gas Co.; Notice of Filing

February 11, 1997.

Take notice that on February 3, 1997, El Paso Natural Gas Company (El Paso) filed revised standards of conduct under § 161.3 of the Commission's regulations, 18 CFR 161.3. El Paso states that it is updating its standards of conduct to reflect that on December 12, 1996, it became affiliated with Tennessee Gas Pipeline Company.

El Paso states that copies of this filing have been mailed to all interstate pipeline system transportation customers of El Paso and interested regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before February 26, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–3856 Filed 2–14–97; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP91–143–041]**

### Great Lakes Gas Transmission Limited Partnership; Notice of Revenue Sharing Report; Past Period Charges

February 11, 1997.

Take notice that on February 6, 1997, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed its Third Interruptible/Overrun (I/O) Revenue Sharing Report related to past period charges with the Federal Energy Regulatory Commission (Commission),

in accordance with the Stipulation and Agreement (Settlement) filed on September 24, 1992, and approved by the Commission's February 3, 1993 order issued in Docket No. RP91–143–000, et al.

Great Lakes states that this report was prepared and submitted in accordance with Article IV of the Settlement, as modified by Commission order issued in Great Lakes' restructuring proceeding in Docket No. RS92–63 on October 1, 1993. This third report reflects application of the revenue sharing mechanism and further remittances made to firm shippers for I/O revenue related to past period charges collected for I/O shippers resulting from the return to rolled-in pricing for the period November 1, 1991 through September 30, 1995. Such remittances were made to Great Lakes; firm shippers on January 9, 1997.

Great Lakes states that copies of this third report were sent to its firm customers, parties to this proceeding and the Public Service Commission of the States of Minnesota, Wisconsin and Michigan.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 19, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–3859 Filed 2–14–97; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP97–235–000]**

## Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

February 11, 1997.

Take notice that on February 6, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in the above docket, a request pursuant to §§ 157.205 and 157.211(a)(2) of the Commission's Regulations, and for authorization to construct and operate a 6-inch tap and dual 6-inch meter station to serve Louisiana Gas Services Company (LGS) a local distribution company, in Tammy Parish, Louisiana, under Koch Gateway's NNS Rate Schedule. Koch Gateway makes such requests, under its blanket certificate issued in Docket No. CP82–430, and pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is file with the Commission and open to public inspection.

Any person or the Commission's staff way, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–3855 Filed 2–14–97; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP95–185–018]**

## Northern Natural Gas Company; Notice of Refund Report

February 11, 1997.

Take notice that on December 9, 1996, Northern Natural Gas Company (Northern) tendered for filing a Report of Refunds showing refunds that were made to Northern's customer on November 8, 1996 pursuant to Article II of the Stipulation and Agreement of Settlement (Settlement) filed in the referenced docket on March 15, 1996 and approved by the Commission on July 31, 1996.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protest must be filed on or before February 19, 1997. Protest will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make Protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–3852 Filed 2–14–97; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP96–367–000]**

## Northwest Pipeline Corporation; Notice of Informal Settlement Conference

February 11, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, February 19, 1997, at 10:00 a.m., and continue through Thursday, February 20, 1997, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the issues in the above-referenced proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact William J. Collins at (202) 208–0248.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–3850 Filed 2–14–97; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. MG97–10–000]**

## Pacific Interstate Transmission Company; Notice of Filing

February 11, 1997.

Take notice that on January 31, 1997, Pacific Interstate Transmission Company (PITCO) submitted a petition for waiver of Part 161 of the Commission's Rules and Regulations, 18 CFR part 161 *et seq.*. PITCO states that it does not operate interstate natural gas facilities and that it will not conduct transportation transactions with Ensource, an affiliated company formed to broker and market natural gas.

PITCO states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or

214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before February 26, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–3857 Filed 2–14–97; 8:45 am]

BILLING CODE 6717–01–M

**[Project No. 2082–013]**

## PacifiCorp; Notice Establishing Comment Period For Petition for Declaratory Order

February 11, 1997.

On December 3, 1996, PacifiCorp filed a petition for declaratory order, pursuant to Rule 207 of the Commission's regulations, 18 CFR 385.207, to remove uncertainty and resolve a dispute involving the scope of a minimum flow requirement under its license for the Klamath Project No. 2082. The petition's statements in support of the relief requested are summarized in this notice.

The Klamath Project consists of six hydroelectric developments located on the Klamath River and one on a tributary of that river, Fall Creek, in Oregon and California. Under contract with the U.S. Department of the Interior's Bureau of Reclamation (Bureau), PacifiCorp also operates the Bureau's Link River Dam, located on Upper Klamath Lake in Oregon, which is the source of the water used to generate power at the six Klamath River developments. Water behind the Link River Dam is also used for irrigation in the Klamath Basin, and the contract requires PacifiCorp to make water available to the Bureau for irrigation purposes.

In 1954, the Commission determined that the project was required to be licensed under the Federal Power Act. In 1961, the Commission amended the project license to require PacifiCorp to release into the streambed below Iron Gate Dam, the development furthest downstream, a minimum flow of 1300 cubic feet per second (cfs) of water from September 1 through April 30 of each year. PacifiCorp claims that, to meet that requirement, it must release sufficient water from Upper Klamath Lake through the Link River Dam.

PacifiCorp states that, in recent years, pressure has been increasing to ensure the availability of water both for species of fish living in Upper Klamath Lake that have been listed as endangered under the Endangered Species Act and for anadromous fish species downstream of Iron Gate Dam that have been proposed to be listed under that act. In addition, the State of California Department of Fish and Game has requested that above-normal flows be provided downstream of Iron Gate Dam at various times of the year to enhance the habitat for anadromous fish downstream of that development, and the Bureau has been coordinating its responsibilities regarding such releases with California Fish and Game, the U.S. Department of Commerce's National Marine Fisheries Service, the U.S. Department of the Interior's Fish and Wildlife Service (FWS), affected Indian tribes, irrigators, and PacifiCorp.

During the 1995–96 irrigation season, irrigators in the Klamath Basin requested that the Bureau and PacifiCorp not release more than 1000 cfs from the Link River Dam after September 1, 1996, to assure the refill of Upper Klamath Lake during the winter of 1996–97. FWS and the Bureau instructed PacifiCorp not to release more than 1000 cfs from the Link River Dam into early September 1996. When PacifiCorp, upon direction from the Bureau, began releasing 1300 cfs from behind Link River Dam on approximately September 4, several irrigators, alleging third-party beneficiary rights under the contract, threatened litigation against PacifiCorp.

PacifiCorp states that the position and threats of the irrigators cause uncertainty regarding its rights and obligations under its license, specifically, its obligation to provide minimum flows downstream of the Iron Gate development. PacifiCorp requests issuance of a declaratory order removing the uncertainty regarding the nature and scope of this obligation and the related issue of compliance with the requests and directives of the FWS and the Bureau regarding PacifiCorp's operations of the Link River Dam. PacifiCorp requests a determination as to whether it must continue to release at least 1300 cfs from the Iron Gate and Link River Dams under the circumstances presented. It seeks a declaratory order on these issues for the purpose of clarifying any subsequent analysis regarding preemption of a state breach of contract action by federal regulation.

Pursuant to Rule 213(d) of the Commission's regulations, 18 CFR 385.213(d)(2), answers to petitions are due within 30 days after filing, unless otherwise ordered. To ensure adequate notice to all interested persons, the Commission staff has determined that notice of the petition for a declaratory order should be published and that the deadline for filing an answer, comments, protests, or petitions to intervene in connection with the licensee's petition for a declaratory order should be as established in this notice.

Any person may file an answer, comments, a protest, or a motion to intervene with respect to PacifiCorp's petition in accordance with the requirements of the Rules and Practice and Procedure, 18 CFR 385.210, 385.211, 385.213, and 385.214. In determining the appropriate action to take with respect to the petition, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any answers, comments, protests, or motions to intervene must be filed by March 20, 1997; and must bear in all capital letters the title ''ANSWER,'' ''COMMENTS,'' ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and ''Project No. 2082–013.'' Send the filings (original and 14 copies) to: the Secretary, Federal Energy Regulatory Commission, 888 1st Street, N.E., Washington, D.C. 20426. A copy of any filing must also be served upon each representative of the licensee specified in its petition. Copies of the petition are on file with the Commission and are available for inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–3858 Filed 2–14–97; 8:45 am]

BILLING CODE 65717–01–M

**[Docket No. CP97–226–000]**

## Sabine Pipe Line Company; Notice of Request Under Blanket Authorization

February 11, 1997.

Take notice that on February 4, 1997, Sabine Pipe Line Company (Sabine) P.O. Box 4781, Houston, Texas 77210–4781, filed in the above docket, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations for authorization to use an existing receipt tap to deliver gas through displacement to MidCon Gas Pipeline Corp. (MidCon). The receipt

tap, constructed under Sabine's blanket certificate issued on March 31, 1983, in Docket No. CP83–199–000, interconnects Sabine's 16-inch low-pressure mainline with MidCon's pipeline in Jefferson County, Texas, all as more fully set forth in the request which is file with the Commission and open to public inspection.

Sabine states that the maximum quantity of gas that will be delivered through the interconnect is 100,000 MMcf per day. Sabine also states that the delivery through displacement to the MidCon point will be available to all existing and potential shippers receiving service under Sabine's IT–1 Rate Schedule set forth in Sabine's FERC Gas Tariff, subject to prevailing operating conditions. Sabine states that no construction is required to operate the point as proposed, and therefore, no costs will be incurred.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.215) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–3854 Filed 2–14–97; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. CP97–223–000]**

## Southern Natural Gas Company; Notice of Application

February 11, 1997.

Take notice that on February 3, 1997, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed an application with the Commission in Docket No. CP97–223–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon in place approximately 87.2 miles of pipeline and pursuant to Section 7(c) of the NGA to construct and operate approximately 5.5 miles of pipeline in Alabama, all as more fully set forth in the application which is open to the public for inspection.

Southern purposes to abandon in place approximately (1) 40.1 miles of 12-inch diameter pipe and 23.5 miles of 10-inch diameter pipe on the Montgomery-Columbus line in Dallas and Elmore Counties; (2) 19.3 miles of 12-inch diameter pipe on the Montgomery-Columbus loop line in Dallas and Autauga Counties; (3) 4.3 miles of 6-inch diameter pipe on the Selma main line in Dallas County; and (4) abandon by removal auxiliary appurtenant facilities.[1] Southern also proposes to construct, install and operate approximately 4 miles of 30-inch diameter pipe in Macon County and 1.5 miles of 30-inch diameter pipe in Dallas County to restore the pipeline capacity lost as a result of the proposed abandonment on Southern's Montgomery-Columbus line and loop line. Southern estimates that it would cost $6.4 million to construct the 5.5 miles of 30-inch diameter pipe on the South Main loop line.

Southern states that all current firm and interruptible transportation shippers who have contracts for natural gas deliveries via any of the facilities proposed for abandonment would continue to receive equivalent service upon completion of the above South Main loop line modifications.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 4, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–3848 Filed 2–14–97; 8:45 am]

BILLING CODE 6717–01–M

[1] Southern states that it received authorization to operate these facilities under the grandfathered certificate issued October 6, 1942, in Docket No. G–296.

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**[Docket No. RP97–215–001]**

## Williston Basin Interstate Pipeline Company; Notice of Compliance Tariff Filing

February 11, 1997.

Take notice that on February 7, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The proposed effective date of these tariff sheets is February 1, 1997.

Williston Basin states that this compliance filing is being filed pursuant to the Commission's January 29, 1997 Letter Order in the above-referenced proceeding which required Williston Basin to remove the current level of electric costs included in its base rates associated with the operation of its electric compressors.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–3851 Filed 2–14–97; 8:45 am]

BILLING CODE 6717–01–M

**DEAPRTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**[Docket No. EG97–31–000, et al.]**

## Coastal Nanjing Power Ltd., et al.; Electric Rate and Corporate Regulation Filings

February 10, 1997.

Take notice that the following filings have been made with the Commission:

1. Coastal Nanjing Power Ltd.

[Docket No. EG97–31–000]

Take notice that on January 31, 1997, Coastal Nanjing Power, Ltd. (''Applicant''), West Wind Building, P.O. Box 111, Grand Cayman, Cayman Islands, B.W.I., filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant, a Cayman Islands Corporation intends to have an ownership interest in certain generating facilities in China. These facilities will consist of a 72 MW (net) electric generating facility located in Nanjing, Jiangsu Province, China, including two diesel-fired gas turbine units and related interconnection facilities.

*Comment date:* February 28, 1997, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Louisiana Public Service Commission v. Entergy Services, Inc.

[Docket No. EL97–26–000]

Take notice that on February 5, 1997, the Louisiana Public Service Commission filed a complaint under Sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824 and 824e against Entergy Services, Inc. as the representative of Entergy Corporation and its operating companies. The complaint seeks a revision of the Entergy System Agreement based upon allegations that the terms of the agreement, under current circumstances, are unjust and unreasonable. Specifically, the complaint alleges that the absence of any provision in the System Agreement excluding curtailable load from the determination of a company's load responsibility under the System Agreement results in an unjust and unreasonable cost allocation to companies that do not cause these costs to be incurred, and results in cross-subsidization among the companies. Additionally, it is alleged that the absence of any provision in MSS–3 for allocating marginal energy costs to customers that purchase energy under Entergy's ''real time pricing'' rate schedules at the retail level discriminates against a company that offers real time pricing.

*Comment date:* March 12, 1997, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before March 12, 1997.

3. PowerNet, LG&E Power Marketing, Inc., Koch Energy Trading, Inc., Kimball Power Company, Logan Generating Company, Penn Union Energy Services, L.L.C. Duke/Louis Dreyfus L.L.C.

[Docket Nos. ER94–931–011, ER94–1188–014, ER95–218–008, ER95–232–008, ER95–1007–004, ER95–1511–003, and ER96–108–007 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 6, 1997, PowerNet filed certain information as required by the Commission's April 22, 1994, order in Docket No. ER94–931–000.

On February 3, 1997, LG&E Power Marketing, Inc. filed certain information as required by the Commission's August 19, 1994, order in Docket No. ER94–1188–000.

On February 5, 1997, Koch Energy Trading, Inc. filed certain information as required by the Commission's January 4, 1995, order in Docket No. ER95–218–000.

On January 13, 1997, Kimball Power Company filed certain information as required by the Commission's February 1, 1995, order in Docket No. ER95–232–000.

On February 3, 1997, Logan Generating Company, L.P. filed certain information as required by the Commission's June 28, 1995, order in Docket No. ER95–1007–000.

On January 13, 1997, Penn Union Energy Services, L.L.C. filed certain information as required by the Commission's September 11, 1995, order in Docket No. ER95–1511–000.

On February 6, 1997, Duke Louis Dreyfus L.L.C. filed certain information as required by the Commission's December 14, 1995, order in Docket No. ER96–108–000.

4. Western Power Services, Inc., PowerTec International, LLC, PowerMark LLC, BTU Power Corporation, Thicksten Grimm Burgum, Inc., Northeast Energy Services, Inc., Atlantic City Electric Company

[Docket Nos. ER95–748–007, ER96–1–005, ER96–332–004, ER96–1283–003, ER96–2241–002, ER96–2523–001, and ER97–243–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On February 6, 1997, Western Power Services, Inc. filed certain information as required by the Commission's May 16, 1995, order in Docket No. ER95–748–000.

On February 4, 1997, PowerTec International, LLC filed certain information as required by the Commission's December 1, 1995, order in Docket No. ER96–1–000.

On February 4, 1997, PowerMark LLC filed certain information as required by the Commission's January 19, 1996, order in Docket No. ER96–332–000.

On February 6, 1997, BTU Power Corporation filed certain information as required by the Commission's April 24, 1996, order in Docket No. ER96–1283–000.

On February 6, 1997, Thicksten Grimm Burgum Incorporated filed certain information as required by the Commission's September 16, 1996, order in Docket No. ER96–2241–000.

On February 6, 1997, Northeast Energy Services, Inc. filed certain information as required by the Commission's September 19, 1996, order in Docket No. ER96–2523–000.

On February 5, 1997, Atlantic City Electric Company filed certain information as required by the Commission's January 6, 1997, order in Docket No. ER97–243–000.

5. Ontario Hydro Interconnected Markets, Inc.

[Docket No. ER97–852–000]

Take notice that on January 30, 1997, Ontario Hydro Interconnected Markets Inc. tendered for filing an amendment in the above referenced docket.

*Comment date:* February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. American Power Reserves Marketing Company

[Docket No. ER97–1428–000]

Take notice that on January 24, 1997, American Power Reserves Marketing

Company (ARM Power) applied to the Commission for (1) acceptance of ARM Power's Rate Schedule FERC No. 1; (2) a disclaimer of jurisdiction over ARM Power's Power brokering activities; (3) blanket authorization to sell electricity at market-based rates; (4) waiver of certain Commission Regulations; and (5) such other waivers and authorizations as have been granted to other power marketers.

ARM Power intends to engage in electric power and energy transactions as a marketer and broker. ARM Power is not in the business of generating, transmitting, or distributing electric power.

*Comment date:* February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Indiana Michigan Power Company

[Docket No. FA91–66–002]

Take notice that on September 25, 1995, Indiana Michigan Power Company tendered for filing its refund report in the above-referenced docket.

*Comment date:* February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Systems Energy Resources, Inc.

[Docket No. FA93–23–002]

Take notice that on January 31, 1997, Systems Energy Resources, Inc. tendered for filing its refund report in the above-referenced docket.

*Comment date:* February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Canal Electric Company

[Docket No. FA93–30–001]

Take notice that on May 26, 1995, Canal Electric Company tendered for filing its refund report in the above-referenced docket.

*Comment date:* February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Detroit Edison Company

[Docket No. FA93–65–002]

Take notice that on January 27, 1997, Detroit Edison Company tendered for filing its refund report in the above-referenced docket.

*Comment date:* February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power Corporation

[Docket No. FA94–56–001]

Take notice that on December 3, 1996, Florida Power Corporation tendered for filing its refund report in the above-referenced docket.

*Comment date:* February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. FA95–25–001]

Take notice that on February 4, 1997, Wisconsin Electric Power Company tendered for filing its refund report in the above-referenced docket.

*Comment date:* February 25, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–3891 Filed 2–14–97; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Office of Hearings and Appeals

### Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of implementation of special refund procedures and solicitation of comments.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy announces procedures concerning the refunding of $214,236.37 (plus accrued interest) in consent order funds. The funds are being held in escrow pursuant to a Consent Judgment and a Bankruptcy Distribution involving Houma Oil Company and Jedco, Inc., respectively.

**DATE AND ADDRESS:** Applications for Refund should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585–0107. All Applications should conspicuously display a reference to either Case Number VEF–0023 (Houma Oil Co.) or VEF–0024 (Jedco, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC. 20585–0107, (202) 426–1575.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision relates to a Consent Judgment entered into by the Houma Oil Company which settled possible pricing violations in the firm's sales of motor gasoline during the period May 1, 1979 through April 30, 1980. The Decision also relates to a Bankruptcy Distribution which settled pricing violations stemming from Jedco, Inc.'s sales of motor gasoline during the period November 1, 1973 through March 31, 1974. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Houma and Jedco settlement funds was issued on October 28, 1996. 61 FR 57868 (November 8, 1996).

The Decision sets forth the procedures and standards that the DOE has formulated to distribute funds remitted by Houma and Jedco and being held in escrow. The DOE has decided that the funds should be distributed in two stages in the manner utilized with respect to consent order funds in similar proceedings. In the first stage, the DOE will consider claims for refunds made by firms and individuals that purchased motor gasoline from Houma and/or Jedco during the respective audit periods.

The second stage of the refund process will take place only in the event that the meritorious first stage applicants do not deplete the settlement funds. Any funds that remain after all first stage claims have been decided will be distributed to state governments for use in four energy conservation programs, in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of l986.

All first stage applications should be submitted within 90 days of publication of this notice. All comments and applications received in this proceeding will be available for public inspection between the hours of 1 to 5 p.m., Monday through Friday, except federal

holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC. 20585–0107.

Dated: February 7, 1997.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

Decision and Order of the Department of Energy

*Special Refund Procedures*

Name of Firms: Houma Oil Company, Jedco, Inc.
Date of Filing: September 1, 1995
Case Numbers: VEF–0023, VEF–0024

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. Part 205, Subpart V, the Regulatory Litigation branch of the Office of General Counsel (OGC)(formerly the Economic Regulatory Administration (ERA)) filed Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on September 1, 1995. The petitions request that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Judgment and a Bankruptcy Distribution concerning Houma Oil Co. (Houma) and Jedco, Inc. (Jedco), respectively.

*Background*

Houma was a ''reseller-retailer'' during the period of price controls. The ERA audited Houma's business records and determined it violated DOE's regulations in its sales of motor gasoline during the period May 1, 1979 through April 30, 1980. On November 21, 1983, the ERA issued a Proposed Remedial Order (PRO) to Houma in which it determined the firm overcharged its customers by $503,810 during the audit period. On August 1, 1984, Houma and DOE entered into a consent order in which Houma agreed to refund the overcharge amount, plus interest, in installment payments to DOE over a two year period. Houma ultimately defaulted on its repayment obligation and the matter was referred to the Department of Justice (DOJ) for enforcement. The DOJ then obtained a Consent Judgment against Houma on February 9, 1995. Pursuant to this Judgment, Houma remitted a total of $210,414.73 to the DOE. Houma then stopped making payment, and the DOE determined that further legal action against Houma was unlikely to result in meaningful benefits to the taxpayer. The residual payment obligation was therefore declared uncollectible.

The DOE issued a Remedial Order (RO) to Jedco on October 24, 1978. *Jedco, Inc.*, Case No. DRW–0006. Like Houma, Jedco was a ''reseller-retailer'' during the audit period November 1, 1973 through March 31, 1974. The RO required the firm to implement a rollback of its motor gasoline prices, thereby restoring its overcharged customers to the position they would have been in absent the overcharges. After the deregulation of petroleum prices, the RO was modified and this requirement was replaced by an order requiring payment to the U.S. Treasury. *Jedco, Inc.*, 8 DOE ¶ 81,068 (1981). Jedco failed to comply with the directives of the DOE in this matter and ultimately declared bankruptcy. The DOE's claim against the firm led to a final distribution to the DOE of $3,821.64. In accordance with current DOE policy, since OGC has been unable to identify the customers injured by the Jedco overcharges, it has petitioned OHA to distribute this amount pursuant to Subpart V.

The funds obtained from the two firms are presently in interest-bearing escrow accounts maintained by the Department of the Treasury. They will be distributed in accord with the procedures outlined herein.

*Jurisdiction*

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of the settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the monies obtained from Houma and Jedco. We therefore grant OGC's petitions and assume jurisdiction over distribution of the funds.

On October 28, 1996, OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the Houma and Jedco settlement funds. The PDO was published in the Federal Register and a 30 day period was provided for the submission of comments regarding our proposed refund plan. *See* 61 Fed. Reg. 57868 (November 8, l996). More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Houma or Jedco settlement funds. Consequently, the procedures will be adopted as proposed.

*Refund Procedures*

In cases where the DOE is unable to identify parties injured by the alleged overcharges or the specific amounts to which they may be entitled, we normally implement a two-stage refund procedure. In the first stage of the proceeding, those who bought refined petroleum products from the consent order firm may apply for a refund, which is calculated on a pro-rata or volumetric basis. In order to calculate the volumetric refund amount, the OHA divides the amount of money available for direct restitution by the number of gallons sold by the consent order firm during the period covered by the consent order. In the second stage, any funds remaining after all first-stage claims are decided are distributed for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501–07.

In the two cases covered by this Decision, however, we lack much of the information that we normally use to provide direct restitution to injured customers of the consent order firms. In particular, we have been unable to obtain any information on the volume of the relevant petroleum products sold by Houma and Jedco during the respective settlement periods. Nor do we have any information concerning the customers of these firms. Based on the present state of the record in these cases, it would be difficult to implement a volumetric refund process. Nevertheless, we shall accept any refund claims submitted by persons who purchased motor gasoline from Houma during the period May 1, 1979 through April 30, 1980 or from Jedco during the period November 1, 1973 through March 31, 1974. We will work with those claimants to develop additional information that would enable us to determine who should receive refunds and in what amounts. *See Bell Fuels, Inc.*, 25 DOE ¶ 85,020 (1995).

*Injury Presumptions/Showing of injury*

As in previous Subpart V proceedings, those customers of Houma and Jedco who were ultimate consumers (end-users) of their motor gasoline shall be presumed injured by their alleged overcharges. These customers will therefore not be required to make a further demonstration of injury in order to receive a refund.

Reseller claimants (including retailers and refiners) who purchased motor gasoline from either of the two firms on a regular (non-spot) basis and whose refund claim is $10,000 or less will also be presumed injured and therefore need not provide further demonstration of injury. *See E.D.G., Inc.*, 17 DOE ¶ 85,679 (1988). We realize that the cost to an applicant of gathering evidence of injury to support a relatively small refund claim could exceed the expected refund. Consequently, in the absence of simplified procedures some injured parties would be denied an opportunity to obtain a refund.

In addition, any reseller refund claimant advancing a refund claim in excess of $10,000 must establish that it did not pass the alleged Houma or Jedco overcharges along to its customers. *See, e.g., Office of Enforcement*, 8 DOE ¶ 82,597 (1981). While there are a variety of means by which a claimant could make this showing, a successful claimant should demonstrate that at the time it purchased motor gasoline from the consent order firm, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, such claimants must show that they had a ''bank'' of unrecovered product costs sufficient to support their refund claim in order to demonstrate that they did not subsequently recover those costs by increasing their product prices. However, the maintenance of a cost bank does not automatically establish injury. *See Tenneco Oil/Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶

85,036 (1982); *Vickers Energy Corp./ Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982), *Motion for Modification denied*, 10 DOE ¶ 85,062 (1983).

Finally, we hereby establish a minimum amount of $15 for refund claims. We have found in prior refund proceedings that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 C.F.R. § 205.286(b).

*Refund Application Requirements*

To apply for a refund from either the Houma or Jedco settlement fund, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of the person to contact for any additional information, and the name and address of the person who should receive any refund check.[1] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) The applicant's use of motor gasoline from Houma and/or Jedco during the audit period: e.g., consumer (end-user), cooperative, or reseller;

(3) A statement certifying that the applicant purchased motor gasoline from Houma during the period May 1, 1979 through April 30, 1980, or from Jedco during the period November 1, 1973 through March 31, 1974;

(4) A statement as to whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in the Houma and/or Jedco refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(5) If the applicant is or was in any way affiliated with Houma and/or Jedco, it should explain this affiliation, including the time period in which the affiliation existed;

(6) A statement as to whether the ownership of the applicant's firm changed during or since the respective audit periods. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the type of sale, e.g., sale of corporate stock, sale of company assets;

(7) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private Section 210 action. If so, an explanation of the case and copies of the relevant documents should also be provided;

(8) The following statement signed by the individual applicant or a responsible official of the firm filing the refund application:[2]

I swear (or affirm) that the information contained in this application is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

Applications should be either typed or printed and clearly labeled ''Houma Oil Company Special Refund Proceeding, Case No. VEF–0023'' or ''Jedco, Inc. Special Refund Proceeding, Case No. VEF–0024.'' Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated ''confidential,'' containing the confidential information, two copies of the application with the confidential information deleted and an explanation of the basis for its confidentiality claim. All refund applications should be postmarked no later than 90 days from the publication of this Decision and Order in the Federal Register, and sent to: Houma Oil Company, OR, Jedco, Inc., Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107.

Any representative that requests that it be a payee of a refund check must file with the OHA if it has not already done so a statement certifying that it maintains a separate escrow account at a bank or other financial institution for the deposit of all refunds received on behalf of applicants, and that its normal business practice is to deposit all Subpart V refund checks in that account within two business days of receipt and to disburse refunds to applicants within 30 calendar days thereafter. Unless such certification is received by the OHA, all refund checks approved will be made payable solely to the applicants. Representatives who have not previously submitted an escrow account certification form to the OHA may obtain a copy of the appropriate form by contacting: Marcia B. Carlson, Chief, Docket & Publications Division, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

*Distribution of Funds Remaining After First Stage*

Any funds that remain after all first-stage claims have been decided will be distributed in accordance with the provisions of PODRA. PODRA requires that the Secretary of Energy determine annually the amount of all overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to OHA. Any funds in the Houma and/or Jedco escrow accounts the OHA determines will not be needed to effect direct restitution to injured customers of either Houma or Jedco will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by the Houma Oil Company pursuant to the Consent Judgment that became effective on February 9, 1995, may now be filed.

(2) Applications for Refund from the funds remitted to the Department of Energy by Jedco, Inc., pursuant to a final bankruptcy distribution effective July 23, l995, may now be filed.

(3) All Applications for Refund must be postmarked no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: February 7, 1997.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 97–3874 Filed 2–14–97; 8:45 am]

BILLING CODE 6450–01–P

[1] Under the Privacy Act of l974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, audition or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[2] We will not process applications signed by filing services or other representatives. In addition, the statement must be dated on or after the date of this Decision and Order. Any application signed and dated before the date of this Decision will be summarily dismissed.

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5690–3]**

## National Environmental Justice Advisory Council Public Participation and Accountability Subcommittee; Notice of Meeting

March 17–18, 1997.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Public Participation and Accountability Subcommittee of the National Environmental Justice Advisory Council will hold a subcommittee meeting on Monday, March 17, 1997, from 1–5 p.m. ET in Room 6226 and Tuesday, March 18, 1997 from 8:30 a.m. to 5 p.m. ET in Room 7216. Both meetings are located

in the National Enforcement Training Institute, Ariel Rios Buildings, 1200 Pennsylvania Avenue NW., Washington, DC 20460, accessible by public transportation via the Federal Triangle Metro Stop.

On Monday, March 17, the subcommittee will participate in a seminar on environmental risk communication principles as they are applied to public participation in the federal sector. On Tuesday, March 28, the subcommittee will meet to plan the next National Environmental Justice Advisory Council meeting scheduled for May 12–15, 1997, at the Potawatomi Indian Springs Lodge & Conference Center, Wabena, Wisconsin (91 miles North of Green Bay). The subcommittee's activities are part of the Council's efforts to provide independent advice, consultation, and recommendations to the Administrator of the U.S. Environmental Protection Agency on matters related to environmental justice. A limited amount of seating for the public will be available on a first-come basis. To reserve a space, send your name, mailing address, fax and telephone number to: Mr. Robert J. Knox, Designated Federal Official, U.S. EPA (2201A), 401 M Street SW., Washington, DC 20460 or FAX to 202–501–0740 or E-mail to: Environmental-Justice-EPA@epamail.epa.gov or E-mail to: Knox.Robert@epamail.epa.gov.

Additional information may be requested by calling 1–800–962–6215.

Dated: February 12, 1997.

Clarice E. Gaylord,

*Director, Office of Environmental Justice.*

[FR Doc. 97–3922 Filed 2–14–97; 8:45 am]

BILLING CODE 8010–01–M

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**[FRL–5690–5]**

## Notice of Proposed Administrative De Micromis Settlement Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act, Regarding the Pollution Abatement Services Superfund Site, in the City Of Oswego, NY

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed administrative agreement and opportunity for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA''), Region II, announces a proposed administrative ''de micromis'' settlement pursuant to Section 122(g)(4) of CERCLA, 42 U.S.C. 9622(g)(4), relating to the Pollution Abatement Services Superfund Site (''Site''). The Site is located in the City of Oswego, New York, and is included on the National Priorities List established pursuant to Section 105(a) of CERCLA. This notice is being published pursuant to Section 122(i) of CERCLA to inform the public of the proposed settlement and of the opportunity to comment. EPA will consider any comments received during the comment period and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

The proposed administrative settlement has been memorialized in an Administrative Order on Consent (''Order'') between EPA and the settling party, Syracuse University (''Respondent'). The Order resolves an EPA claim against Respondent under Sections 106 and 107 of CERCLA. Consistent with EPA's June 3, 1996 *Revised Guidance on CERCLA Settlements with De Micromis Waste Contributors,* the Order does not require the Respondent to make a monetary contribution toward cleanup costs at the Site.

**DATES:** Comments must be provided on or before March 20, 1997.

**ADDRESSES:** Comments should be sent to the individual named below and should refer to: ''Pollution Abatement Services Superfund Site, U.S. EPA Index No. II-CERCLA–96–0211''. For a copy of the settlement document, contact the individual listed below.

**FOR FURTHER INFORMATION CONTACT:** Carol Y. Berns, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637–3177.

Dated: January 29, 1997.

William J. Muszynski,

*Acting Regional Administrator.*

[FR Doc. 97–3928 Filed 2–14–97; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Tuesday, February 11, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Matters relating to the Corporation's supervisory activities.

Matters relating to the probable failure of a certain insured depository institution.

Matters relating to the Corporation's liquidation activities.

Matters relating to the activities of the Corporation's Audit Committee.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Mr. John Downey, acting in the place and stead of Director Nicolas P. Retsinas (Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency) and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9) (A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9) (A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: February 11, 1997.

Federal Deposit Insurance Corporation.

Valerie J. Best,

*Assistant Executive Secretary.*

[FR Doc. 97–4076 Filed 2–13–97; 2:45 pm]

BILLING CODE 6714–01–M

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## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 4, 1997.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Clyde Crews*, as Trustee for the Grossman Trust, both of San Antonio, Texas; to retain power to vote 99 percent of the voting shares of InterContinental Bank Shares Corporation, San Antonio, Texas, and thereby indirectly acquire InterContinental National Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, February 11, 1997.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 97–3870 Filed 2–14–97; 8:45 am]

BILLING CODE 6210–01–F

## Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 1997.

A.Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

*1. USA BancShares, Inc.*, Philadelphia, Pennsylvania; to acquire between 5.0 percent of, and 9.9 percent of, the voting shares of Regent Bancshares Corp., Philadelphia, Pennsylvania, and thereby indirectly acquire Regent Bank, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

*1. Banc One Corporation*, Columbus, Ohio, and Banc One Oklahoma Corporation, Oklahoma City, Oklahoma; to merge with Liberty Bancorp, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Liberty Bank and Trust Company of Oklahoma City, N.A., Oklahoma City, Oklahoma; and Liberty Bank and Trust Company of Tulsa, N.A., Tulsa, Oklahoma.

In connection with this application, Applicant has also applied to acquire Mid-America Credit Life Assurance Company, Oklahoma City, Oklahoma, and thereby engage in underwriting insurance solely related to extensions of credit by subsidiaries of Liberty Bancorp, Inc., pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; Mid-America Insurance Agency, Inc., Oklahoma City, Oklahoma, and thereby engage in selling insurance solely related to extensions of credit by subsidiaries of Liberty Bancorp, Inc., pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y; Liberty Trust Company of Texas, Dallas, Texas, and thereby engage in providing trust services, pursuant § 225.25(b)(3) of the Board's Regulation Y; and Liberty Financial Corporation, Oklahoma City, Oklahoma, and thereby engage in real estate financing and equipment leasing activities for Liberty Bancorp, Inc., pursuant to §§ 225.25(b)(1) and (5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 11, 1997.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 97–3871 Filed 2–14–97; 8:45 am]

BILLING CODE 6210–01–F

## Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 4, 1997.

A. Federal Reserve Bank of New York (Christopher J. McCurdy, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

*1. Banco Bilbao Vizcaya, S.A.*, Bilbao, Spain;, to engage *de novo* through its wholly-owned subsidiary, BBV LatInvest Securities Inc., New York, New York (''Company''), in: (1) underwriting and dealing in, to a limited extent, all types of debt and equity securities that a state member bank may not underwrite or deal in (*see, e.g., J.P. Morgan & Co., Inc.*, 75 Fed. Res.

Bull. 192 (1989)); (2) acting as agent in the private placement of all types of securities (*see Bankers Trust New York Corp.*, 75 Fed. Res. Bull. 829 (1989)); (3) buying and selling all types of securities on order of customers as ''riskless principal'' (*see The Bank of New York Company, Inc.*, 82 Fed. Res. Bull. 748 (1996); (4) providing investment and financial advisory services, pursuant to § 225.25(b)(4) of the Board's Regulation Y; (5) providing full-service brokerage services, pursuant to § 225.25(b)(15) of the Board's Regulation Y; (6) making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y; (7) underwriting and dealing in government obligations and money market instruments in which state member banks may underwrite and deal under 12 U.S.C. §§ 335 and 24(7), putsuant to § 225.25(b)(16) of the Board's Regulation Y; (8) in addition to the securities credit activities under the Board's Regulation T, acting as ''conduit'' or ''intermediary'' in securities borrowing and lending (*see Republic New York Corp., et al.*, 80 Fed. Res. Bull. 249 (1994); and (9) engaging in the following swaps-related activities: (a) acting as agent or broker with respect to interests in loan syndications, interest rate and currency swap transactions and related caps, floors, collars and options thereon (''swap derivative products''); (b) acting as a broker or agent with respect to swaps and swap derivative products, and over-the-counter options transactions, linked to products other than interest rates and currencies, such as certain commodities, stock, bond, or commodity indices, or a hybrid of interest rates and such commodities or indices, a specially tailored basket of securities selected by the parties, or single securities; (c) providing financial and transactions advice regarding the structuring and arranging of swaps and swap derivative products relating to non-financial commodity swap transactions; and (d) providing investment advice, including counsel, written analyses and reports, and other advisory services, including discretionary portfolio management services, with respect to futures and options on futures on non-financial commodities (*see, e.g., Caisse Nationale de Credit Agricole, S.A.*, 82 Fed. Res. Bull. 754 (1996); *First Union Corporation*, 81 Fed. Res. Bull. 726 (1995). Company would conduct these activities in accordance with Regulation Y and the Board's prior orders involving these activities. Company proposes to conduct these activities throughout the world.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

*1. Stichting Prioriteit ABN AMRO Holding*, Amsterdam, The Netherlands; Stichting Administratiekantoor ABN AMRO Holding, Amsterdam, The Netherlands; ABN AMRO Holding N.V., Amsterdam, The Netherlands; ABN AMRO Bank N.V., Amsterdam, The Netherlands; and ABN AMRO North America, Inc., Chicago, Illinois; to acquire Standard Federal Bancorp, Inc., Troy, Michigan, and thereby indirectly acquire Standard Federal Bank, Troy, Michigan (a federally-chartered stock savings bank), and Standard Brokerage Services, Inc., Troy, Michigan, and thereby engage in the nonbanking activities of operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y, and in providing securities brokerage services in combination with investment advisory services, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 11, 1997.

Jennifer J. Johnson,

*Deputy Secretary of the Board*.

[FR Doc. 97–3869 Filed 2–14–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL TRADE COMMISSION

**[File No. 932–3023]**

## The Money Tree, Inc.; Vance R. Martin; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final commission approval, would require, among other things, the Georgia-based money lender and its president to send a notice to all of its current customers offering them the opportunity to cancel the credit-life, credit-disability, and accidental death and disbursement insurance coverages written on their loans, and to receive cash refunds or credits. The agreement also prohibits Money Tree and Martin from requiring consumers to sign statements that credit-related insurance or auto club memberships are voluntarily purchased if these extras are, in fact, required to obtain the loan. The complaint accompanying the consent agreement alleges that Money Tree required consumers to purchase credit-related insurance and auto club memberships (thus substantially increasing the cost of their loans) but failed to disclose to consumers the true cost of their credit, in violation of the Truth in Lending Act and the Federal Trade Commission Act.

**DATES:** Comments must be received on or before April 21, 1997.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:**

David Medicine, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–3025.

Rolando Berrele, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–3211.

Thomas Kane, Federal Trade Commission, S–4429, 6th and Pennsylvania Ave, NW, Washington, DC 20580. (202) 326–2304.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission, Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying compliant. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for February 4, 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final

approval, to a proposed consent order from The Money Tree, Inc. (''Money Tree''), and Vance R. Martin, individually and as an officer of Money Tree (collectively referred to as ''respondents'').

The proposed order would settle charges that Money Tree, which also does business as Money To Lend, Inc. and Money To Lend, violated the Truth in Lending Act (''TILA'') and its implementing Regulation Z. The proposed order would also resolve allegations that Money Tree and Vance R. Martin violated the Federal Trade Commission Act (''FTC Act'') and the Fair Credit Reporting Act (''FCRA''). The TILA and Regulation Z require creditors to provide consumers with written disclosures of the costs and credit terms associated with loans. Section 5 of the FTC Act prohibits unfair or deceptive acts or practices in or affecting commerce. The FCRA requires creditors to provide applicants who are denied credit due to information contained in a credit report with a notice containing the name and address of the credit reporting agency that supplied the report.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Money Tree required consumers to purchase credit-life insurance, credit-disability insurance, accidental death and dismemberment insurance and/or an auto club membership (collectively referred to as ''extras'') in connection with its loans, but (1) failed to include the costs of these extras in the finance charge and annual percentage rate (''APR'') disclosed to consumers, and (2) wrongfully included the premiums and fees in the amount financed, causing customers to pay interest on the premiums and fees for these extras. These practices, according to the complaint, violate sections 106, 107, and 128 of the Truth in Lending Act (''TILA''), 15 U.S.C. §§ 1605, 1606, and 1638, as amended, respectively, and sections 226.4, 226.4(d), 226.22, and 226.18 (b), (d), and (e) of Regulation Z, 12 C.F.R. §§ 226.4, 226.4(d), 226.22, and 226.18(b), (d) and (e), respectively.

The complaint further alleges that respondents violated section 5 of the FTC Act, 15 U.S.C. § 45(a), by inducing consumers to execute documents stating that they voluntarily chose the extras when, in fact, the extras were mandatory to obtain a loan. Finally, the complaint alleges that respondents violated section 615(a) of the FCRA, 15 U.S.C. § 1681m(a), by denying credit to consumers either wholly or partly because of information in a report from a consumer reporting agency but failing to: (a) advise the applicant, at the time the applicant was informed of such adverse action, that the adverse action was based in whole or in part on information contained in a consumer report; and (b) supply the applicant with the name and address of the consumer reporting agency making the report.

The proposed order contains injunctive provisions designed to remedy the violations charged and to prevent respondents from engaging in similar acts and practices in the future. Specifically, the order would require that Money Tree: (1) make all disclosures in accordance with the TILA; (2) include in the finance charge and the APR disclosed to consumers the costs of extras that consumers are required to purchase in connection with their loans; and (3) exclude from the amount financed disclosed to consumers the costs of extras that consumers are required to purchase in connection with their loans.

The proposed order would also prohibit respondents from referring to the availability of any extra without at the same time disclosing orally: (1) that the consumer has already been approved for the loan, (2) the amount of the loan, (3) that the extras are optional, (4) that the consumer's decision about the extras does not affect the amount of their loan or whether the consumer will receive a loan, (5) the amount of the premium or fee for each extra, and (6) that Money Tree will add premiums and fees for the extras to the consumer's loan amount. The proposed order would further require respondents to provide future customers with a separate document that states, *inter alia,* that the consumer has already been approved for the loan and that the consumer should not sign the form unless they want to buy one of the extras. The proposed order would also require that respondents: (a) advise rejected applicants that they have been denied credit in whole or in part because of information in a consumer report; and (b) give rejected applicants the name and address of the consumer reporting agency making the report.

The proposed order would provide Money Tree customers with an opportunity to receive refunds. Under the proposed order, Money Tree must offer its customers an opportunity to cancel the credit-life insurance, credit-disability insurance, and accidental death and dismemberment insurance written on their loans and obtain cash refunds or credits to their accounts.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

Donald S. Clark,

*Secretary.*

[FR Doc. 97–3911 Filed 2–14–97; 8:45 am]

BILLING CODE 6750–01–M

## GENERAL ACCOUNTING OFFICE

### Federal Accounting Standards Advisory Board

### Notice of Meeting

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Thursday, February 27, 1997, from 9:00 a.m. to 4:00 p.m. in room 7C13 of the General Accounting Office building, 441 G St., NW., Washington, DC.

The purpose of the meeting is to discuss (1) the appropriate classification of certain Coast Guard cutters and aircraft, (2) options for social insurance programs, (3) the cost-of-capital work plan, and (4) an interpretation issue from the Environmental Protection Agency's Superfund Accounting Branch related to proper classification of recoveries of clean-up costs.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

**FOR FURTHER INFORMATION CONTACT:** Wendy Comes, Executive Director, 750 First St., NE., Room 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: February 11, 1997.

Wendy M. Comes,

*Executive Director.*

[FR Doc. 97–3860 Filed 2–14–97; 8:45 am]

BILLING CODE 1610–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of National AIDS Policy; Notice of Meeting of the Presidential Advisory Council on HIV/AIDS and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS on April 5–8, 1997, at the Madison Hotel, Washington, D.C. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Saturday, April 5, Sunday April 6, Monday, April 7 and Tuesday, April 8 from 8:30 am to 5:30 pm at the Madison Hotel, 1177 15th Street, N.W., Washington, D.C. 20005. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize recommendations and assess the status of previous recommendations made to the Administration. The agenda of the Presidential Advisory Council on HIV/AIDS will include presentations from the Council's five committees, Research, Services, Prevention, Discrimination and Prison Issues.

Daniel C. Montoya, Office of National AIDS Policy, 750 17th Street, N.W., Washington, D.C. 20503, Phone (202) 632–1090, Fax (202) 632–1096, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Kimberly Farrell at (301) 986–4870 no later than March 28.

Dated: February 5, 1997.

Daniel C. Montoya,

*Office of National AIDS Policy.*

[FR Doc. 97–3825 Filed 2–14–97; 8:45 am]

BILLING CODE 3195–01–M

### Meeting of the National Bioethics Advisory Commission (NBAC), Human Subjects Subcommittee

**SUMMARY:** Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of the third meeting of the subcommittee on the protection of human subjects of the National Bioethics Advisory Commission. The subcommittee members will continue addressing the protection of the rights and welfare of human subjects in research. The meeting is open to the public and opportunities for statements by the public will be provided.

**DATE:** Monday, February 24, 1997, 8:00 a.m. to 4:30 p.m.

**LOCATION:** The subcommittee will meet at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814, in the Versailles I Room, at the Mezzanine level.

**SUPPLEMENTARY INFORMATION:** The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975 on October 3, 1995. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council and other entities on bioethical issues arising from the research on human biology and behavior, and in the applications of that research including clinical applications.

Tentative Agenda

The subcommittee will continue discussion of current approaches to the protection of human subjects by Federal agencies; special protections in research on cognitively impaired subjects; possible topics for further analysis, including the concept of vulnerability, community, and the changing context and paradigm of research; and other related issues.

Public Participation

The meeting is open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact the Deputy Executive Director of the NBAC by telephone, fax machine, or mail as shown below as soon as possible, prior to the meeting. The Chair of the subcommittee will reserve time for presentations by persons requesting an opportunity to speak. The order of speakers will be assigned on a first come, first serve basis. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC at least two business days prior to the meeting for distribution to the subcommittee members and inclusion in the record.

Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

**FOR FURTHER INFORMATION CONTACT:** Ms. Henrietta D. Hyatt-Knorr, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: February 11, 1997.

Henrietta D. Hyatt-Knorr,

*Deputy Executive Director, National Bioethics Advisory Commission.*

[FR Doc. 97–3862 Filed 2–14–97; 8:45 am]

BILLING CODE 4160–17–P

## Agency for Health Care Policy and Research

### Nominations of Topics for Evidence-based Practice Centers (EPCs); Extension for Submission of Topic Nominations

The Agency for Health Care Policy and Research is extending the time of submission for nominations of topics to March 24, 1997. This notice was published in the Federal Register on December 23, 1996 (61 FR 67554–67556).

Dated: February 10, 1997.

Clifton R. Gaus,

*Administrator.*

[FR Doc. 97–3920 Filed 2–14–97; 8:45 am]

BILLING CODE 4160–90–M

## Centers for Disease Control and Prevention

**[Announcement Number 722]**

### Intervention Studies for Construction Safety and Health; Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), announces that applications are being accepted for intervention projects relating to occupational safety and health in the construction industry. Such projects are intended to develop and evaluate the effectiveness of methods or approaches for preventing illnesses and injuries among construction workers. Thus, this announcement is not intended for traditional hypothesis-testing research projects to identify and investigate the relationships between health outcomes and occupational exposures to hazardous agents.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of ''Occupational Safety and Health.'' (For ordering a copy of ''Healthy People 2000,'' see the section

WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under the Public Health Service Act, as amended, Section 301(a) (42 U.S.C. 241(a)) and the Occupational Safety and Health Act of 1970, Section 20(a) (29 U.S.C. 669(a)). The applicable program regulation is 42 CFR part 52.

Eligible Applicants

Eligible applicants include non-profit and for-profit organizations, universities, colleges, research institutions, and other public and private organizations, including State and local governments and small, minority and/or woman-owned businesses.

Note: An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Avalibility of Funds

About $500,000 is available in fiscal year (FY) 1997 to fund approximately 3 project grants. The amount of funding available may vary and is subject to change. Awards are anticipated to range from $150,000 to $200,000 in total costs (direct and indirect) per year. Awards are expected to begin on or about September 30, 1997. Awards will be made for a 12-month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Background

The Bureau of Labor Statistics reported five million employees in the construction sector in 1994 (Undercounting in this sector may be significant because of self-employment). The construction industry is considered one of the most hazardous industries in the nation. For example, there were only 3.3 deaths per 100,000 construction workers in the Netherlands in 1992 compared to 14 deaths per 100,000 construction workers in the United States. More fatalities occur in the construction industry than in any other industry. The construction industry also experiences a higher incidence rate of nonfatal injuries and illnesses than workers in other industries. These injuries and illnesses can also contribute to project delays and lost productivity.

Some construction groups are able to achieve substantially lower injury rates than the national average, which may be the result of interventions that are not widely known. The lost-time injury rate of the National Constructors Association, which consists of several large construction contractors in the United States, was less than 1 per 100 full-time workers in 1993 compared to the national average in construction of 5.1 per 100 full-time workers in 1993. In addition, the average lost-time injury rate from 1988 to 1994 for Army Corps of Engineers construction projects was also less than 1 per 100 full-time workers. The average workers' compensation insurance premiums for all workplaces are 2.4% of payrolls. In contrast, workers' compensation insurance premiums in construction workplaces range upwards to over 100% of payrolls such as in very hazardous iron work at high elevations. All of these problems are influenced by the complexity of the construction work place: Multiemployer work sites, a mobile workforce (multiple employers each year), a continually changing work site for each worker in both location and the kind of work, episodic and potentially high exposures, and work in inclement weather.

For the purposes of this announcement, NIOSH has placed a priority on intervention and control technology research in the construction industry. NIOSH is encouraging intervention research to assess the effectiveness of policies, regulations, education and training, government and private outreach programs, and new technology in preventing disease and injury. Control technology research, a form of intervention research, seeks to prevent work-related diseases and injuries by designing, implementing, and evaluating measures to reduce occupational hazards at their source. In reviewing its National Program for Occupational Safety and Health in Construction, NIOSH has found that solutions to problems often exist (tools, technology, and best safety practices), but they are not adopted at the work place. Effective interventions can lead to reduced injury and death rates.

Purpose

NIOSH seeks to prevent work-related diseases and injuries in the construction industry by designing, implementing, and evaluating measures to reduce occupational hazards. If prevention measures are not currently available, new technologies should be developed for controlling hazardous exposures. Such new technologies must be evaluated to determine that the prevention measures are feasible, even for smaller businesses. Intervention research, of which control technology is a part, examines the utility and impact of new and existing preventive measures in the workplace.

Programmatic Interest

The focus of these grants is to facilitate progress in preventing adverse effects among construction workers. A project that is proposed to develop or test the efficacy of an intervention should be designed to establish, discover, develop, elucidate, or confirm information relating to occupational safety and health, including innovative methods, techniques, and approaches for solving occupational safety and health problems. A project that is proposed to demonstrate the effectiveness of an intervention should address, either on a pilot or full-scale basis, the technical or economic feasibility of implementing a new/improved innovative procedure, method, technique, or system for preventing occupational safety or health problems. A demonstration project should be conducted in an actual workplace where a baseline measure of the occupational problem will be defined, the new/improved approach will be implemented, a follow-up measure of the problem will be documented, and an evaluation of the benefits will be conducted.

The overall NIOSH program priorities, including those related to the construction industry, were developed by NIOSH with input from its partners in the public and private sectors to provide a framework to guide occupational safety and health research in the next decade—not only for NIOSH but also for the entire occupational safety and health community. Approximately 500 organizations and individuals outside NIOSH provided input into the development of the National Occupational Research Agenda (NORA). This attempt to guide and coordinate research nationally is responsive to a broadly perceived need to address systematically those topics that are most pressing and most likely to yield gains to the worker and the

nation. Fiscal constraints on occupational safety and health research are increasing, making even more compelling the need for a coordinated and focused research agenda. NIOSH intends to support projects that facilitate progress in understanding and preventing adverse effects among workers.

The Agenda identifies 21 research priorities. These priorities reflect a remarkable degree of concurrence among a large number of stakeholders. The NORA priority research areas are grouped into three categories: Disease and Injury, Work Environment and Workforce, and Research Tools and Approaches. The NORA document is available through the NIOSH Home Page; http://www.cdc.gov/niosh/nora.html.

Consistent with NORA, the following are high priority directions for research under this announcement. Investigators may also apply in other areas related to construction safety and health, but the rationale for the significance of the research and demonstrations to construction must be developed in the application.

1. Understand how economic issues impact the acceptance of best safety practices.
2. Understand the aspects of changing the safety culture in organizations, including residential and other small contractors.
3. Improve the health and safety aspects of construction tools and of general technology development/utilization.
4. Identify effective ways to obtain information and conduct research on non-union workers and contractors.
5. Identify training techniques that are effective in causing safe work practices to be adopted.
6. Investigate mechanisms that lead to nongovernmental support/funding for regional training and safety and health services.
7. Investigate new concepts for job-site improvement (such as scheduling of deliveries, material location and transport in vehicular worker traffic patterns, etc.).
8. Identify causes of dramatic differences in regional injury rates for both small and large firms, as well as union and non-union operations.
9. Select focus areas that will be of perceived immediate benefit to the customers. (Based upon achievable benchmarks in construction safety and health, the NIOSH program priorities applicable to this Program Announcement are to reduce construction-related deaths, lost-time injuries and illnesses, back injuries, eye injuries, skin disorders or diseases, lead poisonings, hearing loss, silicosis, and asbestosis.)

Potential applicants with questions concerning the acceptability of their proposed work are strongly encouraged to contact the programmatic technical assistance contact listed in this announcement in the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**

Reporting Requirements

Progress reports are required annually as part of the continuation application (75 days prior to the start of the next budget period). The annual progress reports must contain information on accomplishments during the previous budget period and plans for each remaining year of the project. Financial status reports (FSR) are required no later than 90 days after the end of the budget period. The final performance and financial status reports are required 90 days after the end of the project period. The final performance report should include, at a minimum, a statement of original objectives, a summary of research methodology, a summary of positive and negative findings, and a list of publications resulting from the project. Research papers, project reports, or theses are acceptable items to include in the final report. The final report should stand alone rather than citing the original application. Three copies of reprints of publications prepared under the grant should accompany the report.

Evaluation Criteria

Upon receipt, applications will be reviewed by CDC for completeness and responsiveness. Applications determined to be incomplete or unresponsive to this announcement will be returned to the applicant without further consideration. If the proposed project involves organizations or persons other than those affiliated with the applicant organization, letters of support and/or cooperation must be included.

Applications that are complete and responsive to the announcement will be reviewed by an initial review group in which applications will be determined to be competitive or non-competitive based on their technical merit relative to other applications received. Applications determined to be non-competitive will be withdrawn from further consideration and the principal investigator/program director and the official signing for the applicant organization will be promptly notified. Applications judged to be competitive will be discussed and assigned a priority score.

Review criteria for technical merit are as follows:

1. Technical significance and originality of proposed project.
2. Appropriateness and adequacy of the study design and methodology proposed to carry out the project.
3. Qualifications and research experience of the Principal Investigator and staff, particularly but not exclusively in the area of the proposed project.
4. Availability of resources necessary to perform the project.
5. Documentation of cooperation from industry, unions, or other participants in the project, where applicable.
6. Adequacy of plans to include both sexes and minorities and their subgroups as appropriate for the scientific goals of the project (Plans for the recruitment and retention of subjects will also be evaluated.).
7. Appropriateness of budget and period of support.
8. Human Subjects—Procedures adequate for the protection of human subjects must be documented. Recommendations on the adequacy of protections include: (1) Protections appear adequate and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group (ORG) has concerns related to human subjects, or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

Secondary review criteria for programmatic importance are as follows:

1. Results of the initial review.
2. Magnitude of the problem in terms of numbers of workers affected.
3. Severity of the disease or injury in the worker population.
4. Usefulness to applied technical knowledge in the evaluation, or control of construction safety and health hazards.
5. Degree to which the project can be expected to yield or demonstrate results that will be useful on a national or regional basis.

Applicants will compete for available funds with all other approved applications. The following will be considered in making funding decisions:

1. Quality of the proposed project as determined by peer review.
2. Availability of funds.
3. Program balance among priority areas of the announcement.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

*Human Subjects*

The applicant must comply with the Department of Health and Human Services Regulations, 45 CFR part 46, regarding the protection of human subjects. Assurances must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

*Women and Racial and Ethnic Minorities*

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the Federal Register, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadlines

*A. Preapplication Letter of Intent*

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, ''Applications''). It should be postmarked no later than March 14, 1997. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

*B. Applications*

Applicants should use Form PHS–398 (OMB Number 0925–0001) and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the grant application kit. Please submit an original and five copies on or before May 14, 1997 to: Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, (CDC), 255 East Paces Ferry Road, NE., Room 321, MS-E13, Atlanta, GA 30305.

*C. Deadlines*

1. Applications shall be considered as meeting a deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailings.

2. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked your name, address, and telephone number and will need to refer to Announcement 722. You will receive a complete program description, information on application procedures, and application forms. In addition, this announcement is also available through the CDC Home Page on the Internet. The address for the CDC Home Page is http://www.cdc.gov. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., MS–E13, Atlanta, GA 30305, telephone (404) 842–6796; fax: 404–842–6513; internet: glj2@cdc.gov. Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, MS–D30, Atlanta, GA 30333, telephone 404–639–3343; fax: 404–639–4616; internet: rmf2@cdc.gov.

Please Refer to Announcement Number 722 When Requesting Information and Submitting an Application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: February 11, 1997.

Diane D. Porter,

*Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 97–3909 Filed 2–14–97; 8:45 am]

BILLING CODE 4163–19–P

## Food and Drug Administration

### Advisory Committees; Tentative Schedule of Meetings for 1997

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for 1997. At the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. The IOM recommended that the agency publish an annual tentative schedule of its meetings in the Federal Register. In response to that recommendation, FDA is publishing its

annual tentative schedule of meetings for 1997.

**FOR FURTHER INFORMATION CONTACT:** Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4820.

**SUPPLEMENTARY INFORMATION:** The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report, the IOM recommended that FDA adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the Federal Register. FDA has implemented this recommendation. A tentative schedule of forthcoming meetings will be published annually in the Federal Register. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. The schedule is tentative and amendments to this notice will not be published in the Federal Register. FDA will, however, publish a Federal Register notice at least 15 days in advance of each upcoming advisory committee meeting, announcing the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 1997:

| Committee name | Dates of meetings | Hotline code |
|---|---|---|
| OFFICE OF THE COMMISSIONER | | |
| Science Board to the Food and Drug Administration | March 13<br>May 14<br>November 5 | 12603 |
| CENTER FOR BIOLOGICS EVALUATION AND RESEARCH | | |
| Allergenic Products Advisory Committee | April 17–18<br>September 29–30 | 12388 |
| Biological Response Modifiers Advisory Committee | January 30<br>May 6–7<br>July 24–25<br>October 16–17 | 12388 |
| Blood Products Advisory Committee | March 13–14<br>June 19–20<br>September 18–19<br>December 11–12 | 12388 |
| Transmissible Spongiform Encephalopathies Advisory Committee | To be announced (presently, committee is unstaffed) | 12388 |
| Vaccines and Related Biological Products Advisory Committee | January 30<br>March 14<br>April 10–11<br>July 10–11<br>October 27–28 | 12388 |
| CENTER FOR DRUG EVALUATION AND RESEARCH | | |
| Advisory Committee for Pharmaceutical Science | May 7–8<br>August 20–21 | 12539 |
| Advisory Committee for Reproductive Health Drugs | June 5–6 | 12537 |
| Anesthetic and Life Support Drugs Advisory Committee | March 27–28<br>May 22–23<br>September 17–18 | 12529 |
| Anti-Infective Drugs Advisory Committee | January 22 (joint meeting with Nonprescription Drugs Advisory Committee)<br>March 5–7<br>July 24–25<br>November 20–21 | 12530 |
| Antiviral Drugs Advisory Committee | February 21<br>April 24–25<br>September 11–12 | 12531 |
| Arthritis Advisory Committee | February 4–5<br>March 18–19<br>May 6–7<br>July 22–23<br>November 4–5 | 12532 |
| Cardiovascular and Renal Drugs Advisory Committee | January 23 (joint meeting with Nonprescription Drugs Advisory Committee)<br>February 27–28<br>June 26–27<br>October 23–24 | 12533 |
| Dermatologic and Ophthalmic Drugs Advisory Committee | April 17–18<br>July 17–18<br>September 15–16<br>November 13–14 | 12534 |
| Drug Abuse Advisory Committee | February 10–11<br>June 9–10<br>November 20–21 | 12535 |
| Endocrinologic and Metabolic Drugs Advisory Committee | February 20–21 | 12536 |

| Committee name | Dates of meetings | Hotline code |
|---|---|---|
| | March 25–26<br>April 14–15<br>May 13–14<br>July 10–11<br>August 21–22<br>September 22–23<br>November 20–21 | |
| Gastrointestinal Drugs Advisory Committee | September 18–19<br>December 2 | 12538 |
| Medical Imaging Drugs Advisory Committee | March 6–7 | 12540 |
| Nonprescription Drugs Advisory Committee | January 22 (joint meeting with Anti-Infective Drugs Advisory Committee)<br>January 23 (joint meeting with Cardiovascular and Renal Drugs Advisory Committee)<br>March 17–19<br>May 13–14 (with representation from Endocrinologic and Metabolic Drugs Advisory Committee) | 12541 |
| Oncologic Drugs Advisory Committee | March 7<br>May 1–2<br>June 23–24 | 12542 |
| Peripheral and Central Nervous System Drugs Advisory Committee | June 26–27 | 12543 |
| Psychopharmacologic Drugs Advisory Committee | July 14–16<br>August 4–5<br>November 5–7 | 12544 |
| Pulmonary-Allergy Drugs Advisory Committee | April 10–11 | 12545 |
| CENTER FOR FOOD SAFETY AND APPLIED NUTRITION | | |
| Food Advisory Committee | March 20–21<br>May 21–23<br>July 30–31 and August 1<br>September 24–26<br>November 19–21 | 10564 |
| CENTER FOR DEVICES AND RADIOLOGICAL HEALTH | | |
| Device Good Manufacturing Practice Advisory Committee | No meetings planned | 12398 |
| Medical Devices Advisory Committee | | |
| Anesthesiology and Respiratory Therapy Devices Panel | June 6<br>September 5<br>November 21 | 12624 |
| Circulatory System Devices Panel | June 16<br>November 17 | 12625 |
| Clinical Chemistry and Clinical Toxicology Devices Panel | March 20-21<br>May 8<br>July 24–25<br>September 25–26 | 12514 |
| Dental Products Panel | February 12<br>May 21–23<br>July 14–16<br>November 3–5 | 12518 |
| Ear, Nose, and Throat Devices Panel | May 20–21<br>October 22–23<br>December 11–12 | 12522 |
| Gastroenterology-Urology Devices Panel | January 16<br>May 1–2<br>August 7–8<br>November 6–7 | 12523 |
| General and Plastic Surgery Devices Panel | May 5–6<br>August 4–5<br>November 3–4 | 12519 |
| General Hospital and Personal Use Devices Panel | June 2–3<br>September 15–16<br>November 13–14 | 12520 |
| Hematology and Pathology Devices Panel | June 26–27<br>September 4–5<br>November 20–21 | 12515 |
| Immunology Devices Panel | June 13<br>September 19<br>December 5 | 12516 |
| Microbiology Devices Panel | June 19–20<br>September 11–12 | 12517 |
| Neurological Devices Panel | March 14<br>June 27 | 12513 |
| Obstetrics-Gynecology Devices Panel | April 14–15 | 12524 |

| Committee name | Dates of meetings | Hotline code |
|---|---|---|
| Ophthalmic Devices Panel | July 14–15<br>October 6–7<br>January 13–14<br>March 27–28<br>July 10–11<br>October 20–21 | 12396 |
| Orthopedic and Rehabilitation Devices Panel | March 6–7<br>June 9–10<br>October 15–16 | 12521 |
| Radiological Devices Panel | February 24<br>May 12<br>August 18<br>November 17 | 12526 |
| National Mammography Quality Assurance Advisory Committee | January 13–15<br>August 18–20<br>November 3–5 | 12397 |
| Technical Electronic Product Radiation Safety Standards Committee | April 8–9 | 12399 |
| CENTER FOR VETERINARY MEDICINE | | |
| Veterinary Medicine Advisory Committee | May 13–14 | 12546 |
| NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH | | |
| Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee) | September 15–16 | 12560 |
| Science Advisory Board to the National Center for Toxicological Research | June 4–5 | 12559 |

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

Dated: February 7, 1997.

Michael A. Friedman,

*Deputy Commissioner for Operations.*

[FR Doc. 97–3821 Filed 2–14–97; 8:45 am]

**BILLING CODE 4160–01–F**

## Health Care Financing Administration

### HCFA–P–15A

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

HCFA–P–15A *Type of Information Collection Request:* Extension of currently approved collection; *Title of Information Collection:* Medicare Current Beneficiary Survey Supplement-Round 18; *Form No.:* HCFA–′P–15A; *Use:* The Office of the Actuary, HCFA, conducts the Medicare Current Beneficiary Survey (MCBS) through personal interviews of a random sample of Medicare beneficiaries. When sampled persons are found to reside in a long-term care facility, interviewers use a version of the questionnaire which is specially designed to obtain data about the beneficiary's health care from knowledgeable staff members. We are preparing to convert the facility interview from a hard—copy questionnaire to a Computer Assisted Personal Interviewing (CAPI) format, beginning in May, 1997. CAPI, which we are currently using in the community interviews, increases the accuracy of the interview process by automating skip patterns, customizing questions, creating computed variables such as a time line of residence history, and automatically checking completeness and consistency of responses. Concurrently, we are modifying some of the questions we currently use in the facility interview to make them more comparable to those in other surveys, particularly the Medical Expenditure Panel Survey (MEPS). These modifications are responsive to the President's initiative toward consistency and integration among surveys; *Frequency:* Annually; *Affected Public:; Number of Respondents:* 1,900;

*Total Annual Responses:* 1,900; *Total Annual Hours:* 1,900.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 10, 1997.

Edwin J. Glatzel,

*Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.*

[FR Doc. 97–3893 Filed 2–14–97; 8:45 am]

**BILLING CODE 4120–03–P**

## Health Resources and Services Administration

## Special Project Grants and Cooperative Agreement; Maternal and Child Health (MCH) Services; Community Integrated Service Systems (CISS) Set-Aside Program

**AGENCY:** Health Resources and Services Administration (HRSA).

**ACTION:** Notice of availability of funds.

**SUMMARY:** The HRSA announces that approximately $2.3 million in fiscal year (FY) 1997 funds will be available for grants for Maternal and Child Health (MCH) Community Integrated Service Systems grants to support strategies for reducing infant mortality and improving the health of mothers and children through development and expansion of successful community integrated service systems. These community integrated service systems are public-private partnerships of community health and other related organizations and individuals working collaboratively to use community resources to address community-identified health problems. Awards are made under the program authority of section 502(b)(1)(A) of the Social Security Act, the CISS Federal Set-Aside Program. Within the HRSA, CISS projects are administered by the Maternal and Child Health Bureau (MCHB).

Of the approximately $9.8 million available for all CISS activities in FY 1997, about $2.3 million will be available to support approximately 33 new and competing renewal projects at an average of about $69,700 per award for a one-year period. The remaining funds will be used to continue existing CISS projects and for other activities in support of overall CISS program goals. The actual amounts available for awards and their allocation may vary, depending on unanticipated program requirements and the volume and quality of applications. Awards are made for grant periods which generally run from 1 up to 4 years in duration. Funds for CISS awards are appropriated by Public Law 104–208.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The MCH Block Grant Federal Set-Aside Program addresses issues related to the Healthy People 2000 objectives of improving maternal, infant, child and adolescent health and developing service systems for children with special health care needs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone: 202–512–1800).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

**ADDRESSES:** Federal Register notices and application guidance for MCHB programs are available on the World Wide Web via the Internet at address: http://www.os.dhhs.gov/hrsa/mchb. Click on the file name you want to download to your computer. It will be saved as a self-extracting (Macintosh or) WordPerfect 5.1 file. To decompress the file once it is downloaded, type in the file name followed by a <return>. The file will expand to a WordPerfect 5.1 file.

For applicants for CISS grants and cooperative agreements who are unable to access application materials electronically, a hard copy may be obtained from the HRSA Grants Application Center. Applicants for CISS research grants will use PHS form 398, approved by the Office of Management and Budget (OMB) under control number 0925–0001. Applicants for all other CISS awards will use revised PHS form 5161–1, approved under OMB clearance number 0937–0189. Requests should specify the category or categories of activities for which an application is requested so that the appropriate forms, information and materials may be provided. The Center may be contacted by: Telephone Number: 1–888–300–HRSA, FAX Number: 301–309–0579, E-mail Address: HRSA.GAC@ix.netcom.com. Completed applications should be returned to: Grants Management Officer, HRSA Grants Application Center, 40 West Gude Drive, Suite 100, Rockville, Maryland 20850. Please indicate the appropriate CFDA # for the application being submitted (see table below).

**DATES:** Potential applicants are invited to request application packages for the particular program category in which they are interested, and to submit their applications for funding consideration. Deadlines for receipt of applications differ for the several categories of grants. These deadlines are as follows:

COMPETITIVE GRANTS FOR COMMUNITY INTEGRATED SERVICE SYSTEMS (CISS) FEDERAL SET-ASIDE PROGRAM ANTICIPATED DEADLINE, AWARD, FUNDING, AND PROJECT PERIOD INFORMATION, BY CATEGORY FY 1997

| CFDA No. | Funding source category | Application deadline | Est. number of awards | Est. amounts available | Project period (years) |
|---|---|---|---|---|---|
| 93.110(V) | Healthy Tomorrows Partnership for Children. | April 17, 1997 | 10 | $500,000 | 5 |
| 93.110(AN) | CISS Research Grants | July 1, 1997 | 2 | 600,000 | 5 |
| 93.110(AP) | Maternal and Child Health Provider Partnership Cooperative Agreement. | May 13, 1997 | 1 | 200,000 | 5 |

COMPETITIVE GRANTS FOR COMMUNITY INTEGRATED SERVICE SYSTEMS (CISS) FEDERAL SET-ASIDE PROGRAM ANTICIPATED DEADLINE, AWARD, FUNDING, AND PROJECT PERIOD INFORMATION, BY CATEGORY FY 1997—Continued

| CFDA No. | Funding source category | Application deadline | Est. number of awards | Est. amounts available | Project period (years) |
|---|---|---|---|---|---|
| 93.110(AR) | CISS Local/State Community Organization Grants. | April 30, 1997 | 20 | 1 million | 4 |

Applications will be considered to have met the deadline if they are either: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications will be returned to the applicant.

**FOR FURTHER INFORMATION CONTACT:** Requests for technical or programmatic information should be directed to the contact persons identified below for each category covered by this notice. Requests for information concerning business management issues should be directed to: Sandra Perry, Grants Management Officer (GMO), Maternal and Child Health Bureau, 5600 Fishers Lane, Room 18–12, Rockville, Maryland 20857, telephone: 301–443–1440.

**SUPPLEMENTARY INFORMATION:**

Program Background and Objectives

Public Law 101–239, the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989) provided for a new set-aside program under the MCH Block Grant that would be activated when the annual appropriation for title V exceeds $600 million. This has become known as the CISS program. The program seeks to reduce infant mortality and improve the health of mothers and children, including those living in rural areas and those having special health care needs, through project support for development and expansion of strategies which have proved successful in helping communities to achieve integrated service systems.

OBRA 1989 also provided the conceptual framework for strengthening Federal-State partnerships under the MCH Block Grant. States are now expected to work with their Federal and local partners to promote development of comprehensive, community-based systems of health and related services which can assure family-centered, culturally competent, coordinated care for children and their families.

CISS Phase I (FY 92–95) featured support of demonstrations of one or more Congressionally-designated service delivery strategies: Home visiting activities; provider participation in publicly funded programs; one stop shopping service integration projects; not-for-profit hospital/community based initiatives; MCHB projects serving rural populations; and outpatient and community based program alternatives to inpatient institutional care for children with special health care needs. These service delivery demonstrations served as focal points or platforms from which linkages were established with a variety of agencies, laying the foundation for a local system of delivery of services.

Initial CISS grants funded in FY 1992 were required to use at least one of the above-listed six strategies to achieve program objectives. In FY 1993, CISS grants were directed toward developing and/or expanding successful community integrated service systems using at least one of the six strategies. Priority was given to projects which could demonstrate a high likelihood of having continuing support beyond the federal grant period and strong community based public/private organizational collaboration, including participation of the local county/municipal health departments, the State MCH and CSHCN programs, and, where they exist, community and migrant health centers.

In FY 1994 and 1995 CISS grants supported Home Visiting for At-Risk Families (HVAF), in collaboration with the Administration for Children and Families'' (ACF) Family Preservation and Support Program. The purpose of the CISS/HVAF was to assist State MCH programs to emphasize the home visiting model as an important component of care. The CISS/HVAF grants were used to support development of an enhanced health component in the ACF's Five Year State Plans for Family Preservation and Family Support Services.

Prior to establishing the CISS-Phase II program priorities for FY 1996 and beyond, feedback was solicited from members of the MCH community, the 41 current CISS grantees, and the MCH-ACF Technical Assistance Group, a working group of senior State and Federal-level child health, welfare, social services, and child care officials. In FY 1996, MCHB began CISS-Phase II, using a variety of approaches to implement the local systems integration activities developed in Phase I.

Again in FY 1997, CISS funds will support local systems integration activities. CISS funds will also be available in FY 1997 for Community-Based Intervention Research Grant projects, which seek to generate new knowledge on early intervention services models and on how to integrate these models into existing systems of care at the community level while sustaining the essential nature and demonstrated effectiveness of the original prototypes. In addition, FY 1997 CISS funds will be available to fund Healthy Tomorrows projects, which encourage support from the private sector to form community-based partnerships to coordinate preventive health resources for pregnant women, infants, and children. CISS funds will also support a cooperative agreement aimed at enhancing private-public partnerships to restructure and improve perinatal health services in communities.

Program Goal

The goal of the CISS program is to enhance development of service systems at the community level capable of addressing the physical, psychological, social well-being, and related needs of pregnant women, infants, and children, including children with special health care needs and their families. CISS projects assist communities to better meet consumer-identified needs, fill gaps in services, reduce duplication of effort, coordinate activities, increase availability of services, improve efficiency, and enhance quality of care. Programs must be developed in collaboration and coordination with the State MCH Services Block Grant programs and State efforts in community systems development. Where appropriate, programs should be coordinated with other HRSA-funded programs that build community infrastructure in the respective States.

Eligible Applicants

Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), is eligible to apply for grants or cooperative agreements for project categories covered by this announcement. As noted in the Funding Categories section below, based on the subject matter of particular categories or subcategories, applications may be encouraged from applicants with a specified area of expertise. In addition, special funding considerations may apply to certain categories or subcategories.

Funding Categories

CISS funds are available for 4 categories of projects this year: Healthy Tomorrows Partnerships for Children; CISS Research Grants; Maternal and Child Health Provider Partnership Cooperative Agreement; and CISS Local/State Community Organization Grants.

*Category 1: Healthy Tomorrows Partnership for Children (CFDA #93.110V)*

- *Narrative Description of this Competition:* This program supports projects for mothers and children that improve access to health services and utilize preventive strategies. The initiative encourages additional support from the private sector and from foundations to form community-based partnerships to coordinate health resources for pregnant women, infants, and children. Proposals are invited in the following priority program areas: (1) Local initiatives that are community-based, family-centered, comprehensive and culturally relevant and improve access to health services for infants, children, adolescents, or CSHCN; and (2) initiatives which show evidence of a capability to meet cost participation goals for securing funds for the second and sequential years of the project.
- *Estimated Amount of this Competition:* $500,000.
- *Number of Expected Awards:* 10.
- *Funding Priorities and/or Preferences:* In the interest of equitable geographical distribution, special consideration for funding will be given to projects from States without a currently funded Healthy Tomorrows project. These States are identified in the application guidance.
- *Evaluation Criteria:* See Criteria for Review; application guidance materials will specify final criteria.
- *Application Deadlines:* April 17, 1997.
- *Contact Person:* Latricia C. Robertson, telephone: 301–443–8041.

*Category 2: CISS Community-Based Intervention Research (CFDA #110AN)*

- *Narrative Description of this Competition:* The purpose of these projects is to support research on CISS-sponsored early intervention services programs within the context of developing and expanding local service delivery systems. The intent is to generate new knowledge on early intervention services models and on how to integrate these models into existing systems of care at the community level while sustaining the essential nature and demonstrated effectiveness of the original prototypes.
- *Eligible Organizations:* Eligible applicants are public or nonprofit institutions of higher learning and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or children with special health care needs programs.
- *Estimated Amount of this Competition:* $600,000.
- *Number of Expected Awards:* 2.
- *Evaluation Criteria:* See Criteria for Review; application guidance will specify final review criteria.
- *Application Deadline:* July 1, 1997.
- *Contact Person:* Gontran Lamberty, Dr. P.H., telephone: 301–443–2190.

*Category 3: Maternal and Child Health Provider Partnership (CFDA #93.110AP)*

- *Narrative Description of this Competition:* This cooperative agreement will support an effort to encourage private sector involvement and strengthen private-public partnerships to restructure and improve perinatal health services in communities and States and to improve coordination of and access to community health resources for women of reproductive age and infants. The awardee will be expected to analyze the current circumstances and obstacles to providers in the delivery of maternal and infant health services, develop strategies to improve maternal and infant health status and service systems through collaboration with national and State public health organizations, and disseminate and communicate concerns and information pertaining to the issues and strategies employed to their members and to other national organizations.

It is anticipated that substantial Federal programmatic involvement will be required in this cooperative agreement. This means that after award, awarding office staff provide technical assistance and guidance to, or coordinate and participate in, certain programmatic activities of award recipients beyond their normal stewardship responsibilities in the administration of grants. Federal involvement may include, but is not limited to, planning, guidance, coordination and participation in programmatic activities. Periodic meetings, conferences, and/or communications with the award recipient are held to review mutually agreed upon goals and objectives and to assess progress. Additional details on the scope of Federal programmatic involvement in cooperative agreements, consistent with HRSA grants administration policy, will be included in the application guidance for this cooperative agreement.

- *Estimated Amount of this competition:* $200,000.
- *Number of Expected Awards:* 1.
- Funding Priorities and/or Preferences: Preference for funding will be given to national membership organizations representing providers of obstetrical and gynecological services.
- Evaluation Criteria: See Criteria for Review; application guidance materials will specify final criteria.
- Application Deadline: May 13, 1997.
- Contact Person: Ann M. Koontz, Dr.P.H., telephone: 301–443–6327.

*Category 4: CISS Local/State Community Organization Grants (CFDA #93.110AR)*

These grants will support community organization activities in two areas: (1) Local level agencies; and (2) State MCH agencies. Funds may be used to hire staff to assist in consortium building and to function as community organizers, to help formulate a plan for integrated service systems, to obtain and/or provide technical assistance, and to convene community or State networking meetings for information dissemination and replication of systems integration programs.

- Subcategory A: Local Level Community Organization Grants

- *Narrative Description of this Competition:* The purpose of these grants is to provide direct support to local communities to array resources in the most beneficial form to promote consortium building, creation of integrated service systems, or replication of systems integration programs at the local level. While not designed to support direct service delivery, these monies may be used to modify functions of existing service organizations to better complement each other. The specific approach is at the discretion of each community. Because CISS projects are intended to facilitate

the development of systems of services in communities, projects must be consistent with State systems development efforts.

- *Estimated Amount of this Competition:* $500,000.
- *Number of Expected Awards:* 10.
- *Funding Priorities and/or Preferences:* Preference for funding of these grants will be given to local communities. In the interest of equitable geographical distribution, special consideration for funding will be given to projects from communities without a currently-funded CISS project.
- *Application Deadline:* April 30, 1997.
- *Contact Person:* Joseph A. Zogby, M.S.W., telephone: 301–443–4393.

- Subcategory B: State Community Organization Grants

- *Narrative Description of this Competition:* The purpose of these grants is to support strengthened ties between MCHB's community and State-level system development initiatives since FY 1992, thus reinforcing the benefits of the substantial investment in State and local infrastructure-building represented by ongoing SPRANS State Systems Development Initiative (SSDI) grants as well as CISS initiatives. State networking activities which may be supported by these grants include: Providing technical assistance to community and local organizations needing help in systems development; convening statewide meetings; and disseminating and replicating successful local/community strategies.
- *Estimated Amount of this Competition:* $500,000.
- *Number of Expected Awards:* 10.
- *Funding Priorities and/or Preferences:* Preference for funding of these grants will be given to State MCH agencies.
- *Application Deadline:* April 30, 1997.
- *Contact Person:* Joseph A. Zogby, M.S.W., telephone: 301–443–4393.

Special Concerns

In its administration of the MCH Services Block Grant, the MCHB places special emphasis on improving service delivery to women and children from racial and ethnic minority populations who have had limited access to care. This means that CISS projects are expected to serve and appropriately involve in project activities individuals from the populations to be served, unless there are compelling programmatic or other justifications for not doing so. The MCHB's intent is to ensure that project interventions are responsive to the cultural and linguistic needs of special populations, that services are accessible to consumers, and that the broadest possible representation of culturally distinct and historically underrepresented groups is supported through programs and projects sponsored by the MCHB. This same special emphasis applies to improving service delivery to children with special health care needs.

In keeping with the goals of advancing the development of human potential, strengthening the Nation's capacity to provide high quality education by broadening participation in MCHB programs of institutions that may have perspectives uniquely reflecting the Nation's cultural and linguistic diversity, and increasing opportunities for all Americans to participate in and benefit from Federal public health programs, HRSA will place a funding priority on projects from Historically Black Colleges and Universities (HBCU) or Hispanic Serving Institutions (HSI) in all categories in this notice for which applications from academic institutions are encouraged. This is in conformity with the Federal Government's policies in support of White House Initiatives on Historically Black Colleges and Universities (Executive Order 12876) and Educational Excellence for Hispanic Americans (Executive Order 12900). An approved proposal from a HBCU or HSI will receive a 0.5 point favorable adjustment of the priority score in a 4 point range before funding decisions are made.

Evaluation Protocol

An MCH discretionary project, including a CISS, is expected to incorporate a carefully designed and well planned evaluation protocol capable of demonstrating and documenting measurable progress toward achieving the project's stated goals. The protocol should be based on a clear rationale relating the project activities, the project goals, and the evaluation measures. Wherever possible, the measurements of progress toward goals should focus on health outcome indicators, rather than on intermediate measures such as process or outputs. A project lacking a complete and well-conceived evaluation protocol as part of the planned activities may not be funded.

Project Review and Funding

Within the limit of funds determined by the Secretary to be available for the activities described in this announcement, the Secretary will review applications for funds as competing applications and may award Federal funding for projects which will, in her judgment, best promote the purpose of Title V of the Social Security Act, with special emphasis on improving service delivery to women and children from culturally distinct populations; best address achievement of Healthy Children 2000 objectives related to maternal, infant, child and adolescent health and service systems for children at risk of chronic and disabling conditions; and otherwise best promote improvements in maternal and child health.

Criteria for Review

The criteria which follow are derived from MCH project grant regulations at 42 CFR Part 51a or from HRSA administrative policies that apply to MCHB discretionary projects. These criteria are used, as pertinent, to review and evaluate applications for awards under all CISS grant and cooperative agreement categories announced in this notice. Application guidance materials specify final criteria.

—The quality of the project plan or methodology.
—The need for the research or training.
—The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs.
—The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials.
—The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results.
—The extent to which the project personnel are well qualified by training and experience for their roles in the project and the applicant organization has adequate facilities and personnel.
—The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.
—The adherence of the project's evaluation plan to the requirements of the Evaluation Protocol.
—The extent to which the project will be integrated with the administration of the MCH Block Grant, State primary care plans, public health, and prevention programs, and other related programs in the respective State(s).
—The extent to which the application is responsive to the special concerns

and program priorities specified elsewhere in this notice.

Funding of Approved Applications

Final funding decisions for SPRANS research and training grants are the responsibility of the Director, MCHB. In considering scores for the ranking of approved applications for funding, preferences may be exercised for groups of applications, e.g., applications from geographical areas without previously funded projects in particular category vs. applications from with previously funded projects. Within any category of approved projects, the score of an individual project may be favorably adjusted if the project addresses specific priorities identified in this notice. In addition, special consideration in assigning scores may be given by reviewers to individual applications that address areas identified in this notice as meriting special consideration.

Executive Order 12372

The MCH Federal set-aside program has been determined to be a program which is not subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs.

The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: February 6, 1997.

Ciro V. Sumaya,

*Administrator.*

[FR Doc. 97–3892 Filed 2–14–97; 8:45 am]

**BILLING CODE 4160–15–P**

## National Institutes of Health; National Cancer Institute

Notice of Meeting of the National Cancer Advisory Board and its Subcommittees Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on February 24–26, 1997. The meetings of the Board and its Subcommittees will be open to the public as indicated below. Attendance by the public will be limited to space available.

A portion of the Board meeting will be closed to the public in accordance with the provisions set forth in secs. 552b(c)(4), 552b(c)(6), and 552(c)(9)(B), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and for discussion of issues pertaining to programmatic areas and/or NCI personnel. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning the individuals associated with the applications or programs, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy and premature disclosure of recommendations which would inhibit the final outcome and subsequent implementation of recommendations.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630E, 6130 Executive Boulevard, MSC 7410, Rockville, Maryland 20892–7410, (301) 496–5708 will provide summaries of the meetings and rosters of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cynthia Morgan, Committee Management Specialist, at (301) 496–5708 in advance of the meeting.

*Name of Committee:* Ad Hoc Subcommittee on Policy and Advocacy.

*Contact Person:* Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–5147.

*Date of Meeting:* February 24, 1997.

*Place of Meeting:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Open:* 7:00 pm to 9:00 pm.

*Agenda:* To discuss the role of the NCAB in advocacy activities and in advising NCI on extramural and intramural policy.

*Name of Committee:* Subcommittee on Cancer Centers.

*Contact Person:* Dr. Brian Kimes, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 502, 6130 Executive Blvd., MSC 7383, Bethesda, MD 20892–7383, (301) 496–8537.

*Date of Meeting:* February 24, 1997.

*Place of Meeting:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

*Open:* 7:00 pm to 9:00 pm.

*Agenda:* To discuss new Cancer Centers guidelines.

*Name of Committee:* Subcommittee on Planning and Budget.

*Contact Person:* Ms. Cherie Nichols, Executive Secretary, National Cancer Institute, NIH, 7550 Wisconsin Avenue, Room 312, MSC 9010, Bethesda, MD 20892–9010, (301) 496–5515.

*Date of Meeting:* February 25, 1997.

*Place of Meeting:* Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* 1:15 pm to 2:30 pm.

*Agenda:* To discuss the NCI Budget and various planning issues.

*Name of Committee:* Subcommittee on Special Actions for Grants.

*Contact Person:* Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–5147.

*Date of Meeting:* February 25, 1997.

*Closed:* 3:45 to approximately 5:00 pm.

*Place of Meeting:* Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892

*Agenda:* For review and discussion of individual grant applications.

*Name of Committee:* National Cancer Advisory Board.

*Contact Person:* Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Plaza North, Room 600, 6130 Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–5147.

*Dates of Meeting:* February 25–26, 1997.

*Place of Meeting:* Conference Room 10, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* February 25—8:30 am to approximately 1:15 pm; February 25—2:30 pm to approximately 3:45 pm; February 26—8:30 am to adjournment.

*Agenda:* Report of the Director, National Cancer Institute; Reports from the Association of Community Cancer Centers and American Association for Cancer Research; Subcommittee Reports including Global Programs at Cancer Centers and Cancer Center Guidelines; Report of the Director, Division of Research Grants; Discussion of Mammography Guidelines; Discussion of President's Cancer Panel Report on Managed Health Care; and other Council business.

*Closed:* February 25—5:00 pm to adjournment.

*Agenda:* For review and discussion of grant applications and extramural/intramural programmatic and personnel policies.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: February 10, 1997.

LaVerne Y. Stringfield,

*Committee Management Officer, NIH.*

[FR Doc. 97–3937 Filed 2–14–97; 8:45 am]

**BILLING CODE 4140–01–M**

## National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

*Agenda/Purpose:* To review and evaluate grant applications.

*Committee Name:* Subcommittee A—Cancer Center Subcommittee.
*Date:* April 3–4, 1997.
*Time:* 1:00 pm, April 3; 7:30 am, April 4.
*Place:* The Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* David E. Maslow, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd. Room 643A, Bethesda, MD 20892, Telephone: 301–496–2330.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 522b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396 Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 10, 1997.

LaVerne Y. Stringfield,

*Committee Management Officer, NIH.*

[FR Doc. 97–3941 Filed 2–14–97; 8:45 am]

BILLING CODE 4140–01–M

## National Institute of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Program Project Grant Review Teleconference Meeting.
*Date:* March 17, 1997.
*Time:* 1:00 p.m.
*Place:* Teleconference, Executive Plaza North, Room 611B, 6130 Executive Boulevard, Bethesda, MD 20892.
*Contact Person:* Harvey P. Stein, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 611B, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7481.
*Purpose/Agenda* To evaluate and review grant applications.

The meeting will be closed in accordance with the provisions set for the secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Number: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 10, 1997.

LaVerne Y. Stringfield,

*Committee Management Officer, NIH.*

[FR Doc. 97–3942 Filed 2–14–97; 8:45 am]

BILLING CODE 4140–01–M

## National Institutes of Health

### National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix), notice is hereby given of the following meeting:

*Agenda/Purpose:* To review and evaluate grant application and/or contract proposals.
*Name of Committee:* National Center for Human Genome Research Initial Review Group, Genome Research Review Subcommittee.
*Date:* March 6, 1997.
*Time:* 8:30 am.
*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Ave., Chevy Chase, MD, Terrace A.
*Contact Person:* Kenji Nakamura, Ph.D., Office of Scientific Review, National Center for Human Genome Research, National Institutes of Health, Building 38A, Room 604, Bethesda, Maryland 20892, (301) 402–0838.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The application and/or contract proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research)

Dated: February 10, 1997.

LaVerne Y. Stringfield,

*Committee Management Officer, NIH.*

[FR Doc. 97–3936 Filed 2–14–97; 8:45 am]

BILLING CODE 4140–01–M

### National Institutes of Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

*Agenda/Purpose:* To review and evaluate grant applications.
*Committee Name:* National Institute of Mental Health Special Emphasis Panel.
*Date:* March 3, 1997.
*Time:* 11 a.m.
*Place:* Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
*Contact Person:* Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.
*Date:* March 7, 1997.
*Time:* 1 p.m.
*Place:* Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
*Contact Person:* Jean G. Noronha, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–6470.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.
*Date:* March 18, 1997.
*Time:* 1 p.m.
*Place:* Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.
*Contact Person:* Richard Johnson, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–1367.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.
*Date:* March 24, 1997.
*Time:* 11 a.m.
*Place:* Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
*Contact Person:* Michael D. Hirsch, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.
*Date:* March 24, 1997.
*Time:* 1 p.m.
*Place:* Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
*Contact Person:* Michael D. Hirsch, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443–3936.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: February 10, 1997.

LaVerne Y. Stringfield,

*Committee Management Officer, NIH.*

[FR Doc. 97–3938 Filed 2–14–97; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute of Neurological Disorders and Stroke; Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

*Name of Committee*: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

*Date*: February 25, 1997.

*Time*: 1:00 p.m.

*Place*: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.

*Contact Person*: Dr. Howard Weinstein/Mr. Phillip Wiethorn, Scientific Review Administrator, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

*Purpose/Agenda*: To review and evaluate one SBIR Phase I Topic 022 Contract Proposal.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 522b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: February 10, 1997.

LaVerne Y. Stringfield,

*Committee Management Officer, NIH.*

[FR Doc. 97–3939 Filed 2–14–97; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code, Appendix 2), notice is hereby given of the following meeting:

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

*Date:* March 6–7, 1997.

*Time:*

March 6—8 a.m.–5 p.m.

March 7—8 a.m. until adjournment.

*Place:* Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Melissa Stick, Ph.D., M.P.H., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892–7180, 301–496–8683.

*Purpose/Agenda:* To review and evaluate Small Grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 10, 1997.

LaVerne Y. Stringfield,

*Committee Management Officer, NIH.*

[FR Doc. 97–3940 Filed 2–14–97; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

*Purpose/Agenda:* To review and evaluate grant applications.

*Name of Committee:* National Institute of Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Dates of Meeting:* February 24, 1997 (Telephone conference).

*Time:* 10 a.m.

*Place of Meeting:* Willco Building, 6000 Executive Blvd., Rockville, MD 20892.

*Contact Person:* Thomas D. Sevy, M.S.W., 6000 Executive Blvd., Suite 409 Bethesda, MD 20892–7003, 301–443–6107.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

*Purpose/Agenda:* To review and evaluate grant applications.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Dates of Meeting:* March 18, 1997 (Telephone conference).

*Time:* 11 a.m.

*Place of Meeting:* Willco Building, 6000 Executive Blvd., Rockville, MD 20892.

*Contact Person:* Thomas D. Sevy, M.S.W., 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, 301–443–6107.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: February 10, 1997.

LaVerne Y. Stringfield,

*Committee Management Officer, NIH.*

[FR Doc. 97–3944 Filed 2–14–97; 8:45 am]

**BILLING CODE 4140–01–M**

## National Institute on Aging; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute on Aging:

*Name of SEP:* Visual Impairment and Functional Status in Older Persons.

*Date of Meeting:* February 26, 1997.

*Time of Meeting:* 1:00 p.m. to adjournment.

*Place of Meeting:* Tremont Plaza Hotel, 222 St. Paul Place, Baltimore, Maryland 21202.

*Purpose/Agenda:* Review of renewal program project grant application.

*Contact Person:* Dr. Paul Lenz, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

*Name of SEP:* Interdisciplinary Approach to Alzheimer Drug Discovery.
*Date of Meeting:* March 4, 1997.
*Time of Meeting:* 1:00 p.m. to adjournment.
*Place of Meeting:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.
*Purpose/Agenda:* To review a program project grant application.
*Contact Person:* Dr. Louise Hsu, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

*Name of Committee:* Clinical Aging Review Committee (NIA–C).
*Date of Meeting:* March 4, 1997.
*Time of Meeting:* 8:00 a.m. to adjournment.
*Place of Meeting:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
*Purpose/Agenda:* To review a variety of grant applications.
*Contact Person:* Dr. William Kachadorian, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

*Name of Committee:* Biological Aging Review Committee (NIA–B).
*Date of Meeting:* March 10–12, 1997.
*Times of Meeting:*
March 10—7:30 p.m. to recess
March 11—2:00 p.m. to recess
March 12—8:30 a.m. to adjournment
*Place of Meeting:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.
*Purpose/Agenda:* To review a variety of grant applications.
*Contact Person:* Dr. James Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

*Name of Committee:* Neurosciences Aging Review Committee (NIA–N).
*Date of Meeting:* March 10–12, 1997.
*Times of Meeting:*
March 10—7:30 p.m. to recess
March 11—8:30 a.m. to recess
March 12—8:30 a.m. to adjournment
*Place of Meeting:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.
*Purpose/Agenda:* To review grant applications.
*Contact Person:* Drs. Maria Mannarino and Louis Hsu, Scientific Review Administrators, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

*Name of Committee:* Behavior and Sociology of Aging Review Committee (NIA–S).
*Date of Meeting:* March 12–14, 1997.
*Times of Meeting:*
March 12—7:00 p.m. to recess
March 13—8:30 a.m. to recess
March 14—8:30 a.m. to adjournment
*Place of Meeting:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.
*Purpose/Agenda:* To evaluate and review grant applications.
*Contact Person:* Dr. Mary Ann Guadagno, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

*Name of SEP:* Muscle Denervation and Regeneration: Influence of Aging.
*Date of Meeting:* March 14, 1997.
*Time of Meeting:* 3:00 p.m. to adjournment.
*Place of Meeting:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.
*Purpose/Agenda:* To review a program project grant application.
*Contact Person:* Dr. James Harwood, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

*Name of SEP:* S–100B and 5–HT1A: A neuronal-glial link to Alzheimer's.
*Date of Meeting:* April 8, 1997.
*Time of Meeting:* 1:00 p.m. to adjournment.
*Place of Meeting:* Holiday Inn Georgetown, 2101 Wisconsin Avenue, N.W., Washington, D.C. 20007.
*Purpose/Agenda:* To review a program project grant application.
*Contact Person:* Dr. Louise Hsu, Scientific Review Administrator, Gateway Building, Room 2C212, National Institutes of Health, Bethesda, Maryland 20892–9205, (301) 496–9666.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health.)

Dated: February 10, 1997.

LaVerne Y. Stringfield,

*Committee Management Officer, NIH.*

[FR Doc. 97–3945 Filed 2–14–97; 8:45 am]

**BILLING CODE 4140–01–M**

## Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

*Purpose/Agenda:* To review individual grant applications.

*Name of SEP:* Behavioral and Neurosciences.
*Date:* February 28, 1997.
*Time:* Place: 8:30 a.m.
*Place:* Radisson Barcelo Hotel, Washington, DC.
*Contact Person:* Dr. Kenneth Newrock, Scientific Review Administrator, 6701 Rockledge Drive, Room 5186, Bethesda, Maryland 20892, (301) 435–1252.

*Name of SEP:* Chemistry and Related Sciences.
*Date:* March 12, 1997.
*Time:* 8:00 a.m.
*Place:* Holiday Inn, Chevy Chase, MD.
*Contact Person:* Dr. Ronald DuBois, Scientific Review Administrator, 6701 Rockledge Drive, Room 1456, Bethesda, Maryland 20892, (301) 435–1722.

*Name of SEP:* Biological and Physiological Sciences.
*Date:* March 28, 1997.
*Time:* 8:30 a.m.
*Place:* Holiday Inn, Chevy Chase, MD.
*Contact Person:* Dr. Everett Sinnett, Scientific Review Administrator, 6701 Rockledge Drive, Room 5124, Bethesda, Maryland 20892, (301) 435–1016.

*Purpose/Agenda:* To review Small Business Innovation Research.
*Name of SEP:* Microbiological and Immunological Sciences.
*Date:* February 25, 1997.
*Time:* 1:30 p.m.
*Place:* NIH, Rockledge 2, Room 4182, Telephone Conference.
*Contact Person:* Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435–1148.

*Name of SEP:* Behavioral and Neurosciences.
*Date:* March 14, 1997.
*Time:* 8:30 a.m.
*Place:* Holiday Inn, Silver Spring, MD.
*Contact Person:* Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

*Name of SEP:* Biological and Physiological Sciences.
*Date:* March 14, 1997.
*Time:* 9:00 a.m.
*Place:* American Inn, Bethesda, MD.
*Contact Person:* Dr. Nicholas Mazarella, Scientific Review Administrator, 6701 Rockledge Drive, Room 5128, Bethesda, Maryland 20892, (301) 435–1018.

The meetings will be closed in accordance with the provisions set forth in secs. 552(c)(4) and 552(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–

93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Date: February 10, 1997.

LaVerne Y. Stringfield,

*Committee Management Officer, NIH.*

[FR Doc. 97–3943 Filed 2–14–97; 8:45 am]

**BILLING CODE 4140–01–M**

## Substance Abuse and Mental Health Services Administration

### Privacy Act of 1974: Addition of Routine Uses to an Existing System of Records

**AGENCY:** Substance Abuse and Mental Health Services Administration, DHHS.

**ACTION:** Notification of the addition of two new routine uses to an existing system of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act, the Substance Abuse and Mental Health Services Administration (SAMHSA) is publishing a notice to add two new routine uses to system of records 09–30–0047, entitled ''Patient Records on Chronic Mentally Ill Merchant Seamen Treated at Nursing Homes in Lexington, Kentucky (1942 to the Present, HHS/SAMHSA/Center for Mental Health Services (CMHS)).''

**DATES:** SAMHSA invites interested persons to submit comments on the proposed new routine uses on or before March 20, 1997.

SAMHSA will adopt these routine uses without further notice 30 days after the date of publication unless comments are received which would result in a contrary determination.

**ADDRESS:** Please address comments to the SAMHSA Privacy Act Officer, Room 13C–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. We will make comments available for public inspection at the above address during normal business hours, 8:30 a.m.–5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Program Development, Special Populations and Projects, CMHS/SAMHSA, Room 16C–26, Parklawn Building 5600 Fishers Lane, Rockville, MD 20857 (301)–443–2940. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** SAMHSA currently maintains the Chronic Mentally Ill Merchant Seamen Treated at Nursing Homes in Lexington, Kentucky Records System to facilitate patient care, to monitor progress, and to ensure quality and continuity of care. These patients have received care and treatment at various Public Health Services facilities across the Nation for over 50 years. They continue to receive care under a contract between SAMHSA and the Commonwealth of Kentucky pursuant to section 10 of the Health Services Amendments of 1985, Public Law 99–117.

The proposed new routine uses (numbers four and five) will permit disclosure of information to: (1) Federal, State, or local organizations which provide medical care and treatment to these patients, and (2) the Department of Veterans Affairs, Social Security Administration, and other Federal or State organizations having special benefit programs.

This system was last published in the Federal Register on December 25, 1994 (59 FR., 67079).

The following routine uses are written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the routine uses after they have become effective.

Dated: January 31, 1997.

Richard Kopanda,

*Executive Officer, Substance Abuse and Mental Health Services Administration.*

**09–30–0047**

**SYSTEM NAME:**

Patient Records on Chronic Mentally Ill Merchant Seamen Treated at Nursing Homes in Lexington, Kentucky (1942 to the Present, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:**

* * * * *

4. Records may be disclosed to Federal, State, local, or other authorized organizations which provide medical care and treatment to these individuals to facilitate continuity of care by supplying information to medical care facilities/practitioners who provide treatment to individual seamen.

5. Records may be disclosed to the Department of Veterans Affairs, the Social Security Administration, or other Federal or State agencies having special benefit programs for the purpose of obtaining these benefits for these individuals.

[FR Doc. 97–3912 Filed 2–14–97; 8:45 am]

**BILLING CODE 4162–20–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4021–N–05]**

### NOFA for Public and Indian Housing Economic Development and Supportive Services (EDSS) Grant: Notice of Procedure for Determining Funding in the Event of Tie Scores

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** NOFA for Public and Indian Housing Economic Development and Supportive Services (EDSS) Grant: Notice of procedure for determining funding in the event of tie scores.

**SUMMARY:** This notice amends the NOFA published in the Federal Register on August 14, 1996 (61 FR 42356) to advise of the procedure that HUD will use to determine how public housing agency and Indian housing authority applications will be selected for funding in the event of tie scores.

**FOR FURTHER INFORMATION CONTACT:** Marcia Y. Martin, Office of Community Relations and Involvement, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4108, Washington, DC 20410; telephone (202) 708–4214. Hearing- or speech-impaired persons may contact the Federal Information Relay Service on 1–800–877–8339 or 202–708–9300 for information on the program. (With the exception of the ''800'' number, the numbers listed above are not toll free numbers).

**SUPPLEMENTARY INFORMATION:** On August 14, 1996 (61 FR 42356), HUD published a notice of funding availability that announced grants to public housing agencies and Indian housing authorities that are in partnership with non-profit or incorporated for-profit agencies to (1) provide economic development opportunities and supportive services to assist residents of public and Indian housing to become economically self-sufficient, particularly families with children where the head of household would benefit from the receipt of supportive services and is working, seeking work, or is preparing for work by participating in job-training or educational programs, and (2) to provide supportive services to assist the elderly and persons with disabilities to live independently or to prevent premature or unnecessary institutionalization.

The August 14, 1996 NOFA was amended by notice published in the Federal Register on September 26, 1996 (61 FR 50501) to extend the application

deadline for all applicants to October 29, 1996. The August 14, 1996 NOFA was amended by notice published in the Federal Register on October 22, 1996 to extend the application deadline to November 12, 1996 for HUD's Puerto Rico office as a result of severe flooding caused by Hurricane Hortense.

This notice amends the August 14, 1996 NOFA to advise of the procedure that HUD will use to determine how public housing agency and Indian housing authority applications will be selected for funding in the event of tie scores. The procedure for breaking tie scores was inadvertently omitted from the August 14, 1996 NOFA.

Accordingly, the NOFA for Public and Indian Housing Economic Development and Supportive Services (EDSS) Grants, published at 61 FR 42356 on August 14, 1996, is amended as follows:

On page 42360, column two, the first paragraph is revised to read as follows:

All PHA and the remaining IHA applications will be placed in an overall nationwide ranking order and funded until all funds are exhausted. In the event of tie scores, at the lowest ranking eligible for funding, HUD will award the funds by providing a proportioned amount to each applicant sharing the tied score. The proportioned amount will be based on the amount of funding requested by each tied applicant relative to the total amount requested by all tied applicants. This ratio will then be applied against the amount of remaining funds available at this point in the competition. Should a grantee decide not to accept the proportioned amount, those funds will be reallocated for use in the FY 1997 EDSS funding round.

Dated: February 12, 1997.

Kevin E. Marchman,

*Acting Assistant Secretary for Public and Indian Housing.*

[FR Doc. 97–3971 Filed 2–14–97; 8:45 am]

**BILLING CODE 4210–33–P**

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**[Docket No. FR–4209–N–01]**

## Mortgagee Review Board Administrative Actions

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

**FOR FURTHER INFORMATION CONTACT:** Morris E. Carter, Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1515. (This is not a toll-free number). A Telecommunications Device for Hearing and Speech-Impaired Individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

**SUPPLEMENTARY INFORMATION:** Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989 Pub. L. 101–235), approved December 15, 1989, requires that HUD ''publish a description of and the cause for administrative action against a HUD-approved mortgagee'' by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from October 1, 1996 through December 31, 1996.

1. BancPlus Mortgage, San Antonio, Texas

*Action:* Settlement Agreement that includes indemnification to the Department for any claim losses in connection with ten improperly originated FHA-insured mortgages.

*Cause:* A HUD monitoring review that disclosed violations of HUD–FHA requirements that include: using alleged false information to originate HUD–FHA insured mortgages; failing to properly document the credit background and evaluate the credit risk of borrowers; permitting mortgagors to handcarry verification of employment forms; requiring mortgagors to sign blank documents; and failing to timely remit Up-Front Mortgage Insurance Premiums (UFMIPs) to HUD–FHA.

2. Grand Capital Mortgage and Investment Company, Inc., Los Angeles, California

*Action:* Proposed Settlement Agreement that would include: indemnification to the Department for any claim losses in connection with seven improperly originated FHA insured mortgages; payment to the Department of a civil money penalty in the amount of $9,000; and corrective action to assure compliance with HUD–FHA requirements.

*Cause:* A HUD monitoring review that cited violations of HUD–FHA requirements that include: failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); failure to implement and maintain an adequate Quality Control Plan; sharing office space and commingling employees with another company; utilizing, and paying ''kickbacks'' to an unapproved entity for mortgage origination; failure to obtain documents required to accurately evaluate borrowers' credit risk; failure to verify the source and adequacy of mortgagors' closing funds; improper calculation of borrowers' effective income; closing HUD–FHA insured mortgages that exceed the regulatory maximum loan amount; deleting a co-mortgagor in a streamline refinance; exceeding HUD–FHA ratio guidelines without documenting significant compensating factors; and preparing inaccurate Settlement Statements.

3. Diamond Coast Financial, Inc., Hesperia, California

*Action:* Probation and a proposed Civil Money Penalty in the amount of $32,000.

*Cause:* A HUD monitoring review that disclosed violations of HUD–FHA requirements that include: Failure to remit to HUD–FHA at least 184 Up-Front Mortgage Insurance Premiums (UFMIPs); misrepresentation to HUD–FHA in obtaining approval of independent realtors and brokers as branch offices; using non-employees to originate HUD–FHA insured mortgages; using, and paying fees to, a mortgage company not approved by HUD–FHA to originate HUD–FHA insured mortgages; improperly paying closing costs for a mortgagor and failing to honor the mortgagor's request to rescind the transaction; and using misleading advertising in connection with the Title I program.

4. Trust One Mortgage Corporation, Irvine, California

*Action:* Settlement Agreement that includes: indemnification to the Department for any claim losses in connection with eight improperly originated property improvement loans under the HUD–FHA Title I property improvement loan program; payment to the Department of a civil money penalty in the amount of $2,000; and corrective action to assure compliance with HUD–FHA requirements.

*Cause:* A HUD monitoring review that cited violations of HUD–FHA Title I program requirements that include: permitting non-employees to originate loans; failure to document a borrower's source of funds for the initial payment, and permitting the payment to be made from loan proceeds; failure to disburse loan proceeds at closing; and use of misleading advertising.

5. Barrons Mortgage Corporation, Brea, California

*Action:* Proposed Settlement Agreement that would include:

indemnification to the Department for any claim losses in connection with seven improperly originated property improvement loans under the HUD–FHA Title I property improvement loan program; payment to the Department of a civil money penalty in the amount of $2,000; and corrective action to assure compliance with HUD–FHA requirements.

*Cause:* A HUD monitoring review that disclosed violations of HUD–FHA Title I program requirements that include: use of alleged false tax returns to qualify borrowers; accepting verifications of employment and W–2 forms containing inconsistent information to qualify borrowers; permitting non-approved brokers to originate loans; accepting insufficient cost estimates; and use of misleading advertising.

6. Comstock Mortgage, Sacramento, California

*Action:* Proposed Settlement Agreement that would include: payment to the Department of a civil money penalty in the amount of $4,000; and corrective action to assure compliance with HUD–FHA requirements.

*Cause:* A HUD monitoring review that cited violations of HUD–FHA requirements that include: failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); and failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages.

7. Home Owners Funding Corp., Bloomington, Minnesota

*Action:* Settlement Agreement that includes: payment to the Department of a civil money penalty in the amount of $2,500; and corrective action to assure compliance with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

*Cause:* Failure to timely submit HMDA data to HUD–FHA.

8. Lovell & Malone, Inc., Nashville, Tennessee

*Action:* Settlement Agreement that includes: payment to the Department of a civil money penalty in the amount of $2,500; and corrective action to assure compliance with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

*Cause:* Failure to timely submit HMDA data to HUD–FHA.

Dated: February 10, 1997.

Nicolas P. Retsinas,

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 97–3895 Filed 2–14–97; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Application

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–825177

*Applicant:* Dr. Cynthia E. Rebar, University of Pennsylvania, Edinboro, Pennsylvania.

The applicant requests a permit to take (capture and release) Indiana bats (*Myotis sodalis*) at the Ravenna Army Ammunition Plant, Ravenna, Ohio, for biological survey purposes. Activities are proposed for the purpose of enhancement of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Division of Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); FAX: (612/725–3526).

Dated: February 9, 1997.

John A. Blankenship,

*Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.*

[FR Doc. 97–3935 Filed 2–14–97; 8:45 am]

BILLING CODE 4310–55–P

### Bureau of Land Management

### Lewistown, MT, District Office; Meeting

**AGENCY:** Bureau of Land Management, Lewistown District Office.

**ACTION:** Notice of meeting.

**SUMMARY:** A sub-committee of the Lewistown District Resource Advisory Council will meet February 26, 1997, at 10:00 am, in the Conference Room at the Lewistown District Bureau of Land Management Office, on Airport Road in Lewistown.

This sub-committee was empowered by the full Resource Advisory Council (during a February 4–5, 1997 meeting) to meet and revise the council's recommendations concerning standards and guidelines for rangeland management.

There will be a public comment period at 11:30 am during the February 26, 1997 meeting.

**DATES:** February 26, 1997.

**LOCATION:** Lewistown District Bureau of Land Management Office, Airport Road, Lewistown.

**FOR FURTHER INFORMATION CONTACT:** District Manager, (406) 538–7461, Lewistown District Office, Bureau of Land Management, Box 1160, Airport Road, Lewistown, MT 59457.

**SUPPLEMENTARY INFORMATION:** The sub-committee meeting is open to the public and there will be a public comment period as detailed above.

Dated: February 7, 1997.

David L. Mari,

*District Manager.*

[FR Doc. 97–3902 Filed 2–14–97; 8:45 am]

BILLING CODE 4310–DN–P

**[UT–942–1430–01; UTU–76019, UTU–76020, UTU–76021]**

### Filing of State Quantity Grant Application; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** On December 12, 1996, the State of Utah filed quantity grant application, UTU–76019, UTU–76020, and UTU–76021, to have 35.00 acres of federally-owned land and interest in land transferred to the State of Utah under the provisions of Section 7, Section 12, and Section 8, respectively, of the Act of July 16, 1894 (28 Stat. 109), and pursuant to 43 CFR part 2622.

**FOR FURTHER INFORMATION CONTACT:** Angela D. Williams, Bureau of Land Management, Utah State Office, 324 South State Street, PO Box 45155, Salt

Lake City, Utah 84145–0155, 801–539–4107.

**SUPPLEMENTARY INFORMATION:** The lands containing the federally-owned lands and interests in land included in this application are described as follows:

Salt Lake Meridian

T. 42 S., R. 14 W.,
Sec. 8, NW¼SW¼SE¼SW¼, NW¼SE¼SW¼, NW¼NE¼SE¼SW¼, NW¼NW¼SE¼, NW¼SE¼NE¼.

The area described contains 35.00 acres located in Washington County.

The filing of this application segregates the federally-owned lands and interests in land from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing act. This segregative effect shall terminate upon the issuance of a document of conveyance to these federally-owned lands and interests in lands, or upon the publication in the Federal Register of a notice of termination of the segregation, or upon the expiration of two years from the date of the filing of this application, whichever occurs first.

Teresa L. Catlin,

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 97–3923 Filed 2–14–97; 8:45 am]

**BILLING CODE 4310–DQ–P**

## Notice of intent

**AGENCY:** Bureau of Land Management, Department of Interior.

**ACTION:** Notice of intent is to amend the Federal Register Notice dated January 23, 1997, Volume 62, number 15, page 3520–3521 by adding the date, time, and location of an additional public scoping meeting.

**SUMMARY:** The intent in the January 23, 1997, Federal Register Notice is to prepare a Coordinated Resource Management Plan/Environmental Impact Statement and Notice of Intent to amend the Book Cliffs Resource Management Plan.

The following public scoping meetings are scheduled: March 17, 1997, 7:00 p.m. to 9:00 p.m., in the John Wesley Powell Museum in Green River, Utah; March 18, 1997, 7:00 p.m. to 9:00 p.m., in the Department of Natural Resources Auditorium, Room 1040–1060, at 1594 West North Temple, Salt Lake City, Utah; and March 26, 1997, 7:00 p.m. to 9:00 p.m. in the Western Park Conference Center, 302 East 200 South in Vernal, Utah.

**SUPPLEMENTARY INFORMATION:** The date, time, and location of the additional public scoping meeting is March 25, 1997, 7:00 p.m. to 9:00 p.m., in the Civic Center at 450 E. 100 N. in Moab, Utah.

**FOR FURTHER INFORMATION CONTACT:** Dean Evans, Resource Advisor, Vernal District Office, 170 South 500 East, Vernal, Utah 84078. Business hours are from 7:45 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, telephone (801) 781–4400 or 781–4430, fax (801) 781–4410.

Dated: February 7, 1997.

G. William Lamb,

*State Director, Utah.*

[FR Doc. 97–3899 Filed 2–14–97; 8:45 am]

**BILLING CODE 4310–DQ–M**

**[AZ-025–97–1610]**

## Notice of Intent To Prepare a Kingman Resource Management Plan Amendment and Associated Environmental Assessment

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent, notice of scoping period and notice of scoping meeting.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Kingman Field Office, will be preparing a plan amendment and environmental assessment (EA) to assess the impacts of establishing a herd management area in the Cerbat Mountains. The purpose of a herd management area is to provide for the maintenance of the wild horse herd. The Cerbat Mountains are located north of Kingman, in Mohave County, Arizona. The herd management area could encompass up to approximately 77,000 acres. This notice is intended to invite the public to participate in identification of issues and development of alternatives for the plan amendment.

**DATES:** Public scoping meetings to identify public concerns will be held on the following dates and locations: Monday, March 3, 1997, at 5:30 p.m. at the Chloride Community Center, located on Payroll Street in Chloride, Arizona, and Tuesday, March 4, 1997, at 5:30 p.m. at the BLM Office in Kingman located at 2475 Beverly Avenue, Kingman, Arizona. Comments relating to the identification of issues and alternatives must be postmarked by March 21, 1997.

**ADDRESS:** Send comments to: Bureau of Land Management, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

**FOR MORE INFORMATION CONTACT:** Don McClure, Planning and Environmental Specialist, (520) 757–3161.

**SUPPLEMENTARY INFORMATION:** In accordance with the guidance from 43 CFR 4710.1, the establishment of a herd management area must be done through the land use planning process. Following the establishment of a Herd Management Area, a plan will be written to guide the management of the horses and their habitat.

Anticipated Issues

The resolution of issues will have an affect on the location of the land for the herd management area. The following are the issues: Intermingled Ownership as it affects the ability of BLM to manage the horse herd; and domestic horses grazing in the herd area. There are other issues associated with management of the horses, but they are common to any boundary alternative. These issues are forage allocation, horse numbers and distribution, water, lion predation, and barriers to horse movement. Resolution of these issues will come after the establishment of a herd management area and be within the context of the Herd Management Area Plan.

Other Relevant Information

The amendment will be developed by an interdisciplinary team of resource specialists. The team will include a project manager, a wildlife specialist, wild horse and burro specialist, and a rangeland management specialist. Complete records of all phases of the plan amendment process will be available for public review at the Kingman Field Office, Kingman, Arizona.

Denise P. Meridith,

*State Director, Arizona.*

[FR Doc. 97–3894 Filed 2–14–97; 8:45 am]

**BILLING CODE 4310–32–P**

**[ID–957–1430–00]**

## Idaho: Filing of Plats of Survey; Idaho

The supplemental plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. February 5, 1997.

The supplemental plat, prepared to create lot 1 in the NE ¼ of section 15, T. 2 N., R. 4 W., Boise Meridian, Idaho, was accepted February 5, 1997.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management. All inquiries concerning the survey of the above described land must be sent to Chief, Cadastral Survey, Idaho State Office,

Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: February 5, 1997.

Duane E. Olsen,

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 97–3900 Filed 2–14–97; 8:45 am]

BILLING CODE 4310–GG–M

**[ES–960–1420–00] ES–48578, Group 27, Illinois**

## Notice of Filing of Plat of Survey; Illinois

The plat, in five sheets, of the dependent resurvey of portions of the north and west boundaries, portions of the subdivisional lines, and the survey of the subdivision of section 8 and the Lock and Dam No. 26 acquisition boundary, Township 13 South, Range 1 West, Fourth Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on March 24, 1997.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., March 24, 1997.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: February 7, 1997.

Stephen G. Kopach,

*Chief Cadastral Surveyor.*

[FR Doc. 97–3832 Filed 2–14–97; 8:45 am]

BILLING CODE 4310–GJ–P

**[OR–958–0777–63; GP7–0075; OR–52183, CAS–080090]**

## Proposed Withdrawal and Opportunity for Public Meeting; Oregon and California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, proposes to withdraw 293.39 acres of public lands, and 2,800.14 acres of National Forest System lands, lying within the Rogue River National Forest, to protect the recreational values and facilities for the Applegate Lake Recreation Area. This notice closes the lands for up to 2 years from surface entry and mining. The lands have been and will remain open to mineral leasing.

**DATE:** Comments and requests for a public meeting must be received by May 19, 1997.

**ADDRESS:** Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

**FOR FURTHER INFORMATION CONTACT:** Betty McCarthy, BLM Oregon/Washington State Office, 503–952–6155.

**SUPPLEMENTARY INFORMATION:** On September 19, 1996, a joint interchange order agreeing to the transfer of administrative jurisdiction on certain lands between the Secretary of the Army and Secretary of Agriculture was published in the Federal Register. On August 24, 1995, the Forest Service filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2(1988)), but not the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

*Public Domain Lands*

T. 41 S., R. 3 W.,
Sec. 6, E½NE¼, NW¼NE¼, NE¼NW¼, and NE¼SE¼.
T. 41 S., R. 4 W.,
Sec. 2, SE¼NE¼ and NW¼NW¼;
Sec. 14, lot 8.

The areas described aggregate 293.39 acres in Jackson County, Oregon.

Rogue River National Forest

T. 40 S., R. 3 W.,
Sec. 30, lots 3, 4, 6, and 7, SE¼NW¼, and E½SW¼;
Sec. 31, lots 1, 2, 3, and 4, W½E½, and E½W½.
T. 40 S., R. 4 W.,
Sec. 25, NE¼, SW¼, NE¼SE¼, W½SE¼, and N½SE¼SE¼;
Sec. 26, E½SE¼;
Sec. 34, SE¼SE¼;
Sec. 35, NE¼NE¼, S½NE¼, SW¼, NE¼SE¼, and W½SE¼.
T. 41 S., R. 4 W.,
Sec. 1, NW¼NW¼, S½NW¼, and N½S½;
Sec. 3, E½NE¼, N½SW¼, and SE¼;
Sec. 11, NE¼, E½NW¼, and W½SW¼;
Sec. 15, lots 5 and 6.

The areas described aggregate 2,661.95 acres in Jackson County, Oregon.

Mount Diablo Meridian

*Rogue River National Forest*

T. 48 N., R. 11 W.,
Sec. 17, lots 3 and 4, and SE¼SW¼;
Sec. 18, lot 1.

The area described contains 138.19 acres in Siskiyou County, California.

The areas described aggregate a total of 3,093.53 acres in Siskiyou County, California, and Jackson County, Oregon.

The purpose of the proposed withdrawal is to protect the recreational values, facilities, and improvements as to the public lands and the National Forest System lands for the Applegate Lake Recreation Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed action. All interested parties who desire a public meeting for the purpose of being heard on the proposed action must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses on National Forest System lands which may be permitted until this action becomes final, are other National Forest management activities, including permits, licenses, and cooperative agreements, that are compatible with the intended use under the discretion of the authorized officer.

Dated: January 31, 1997.

Robert D. DeViney, Jr.,

*Chief, Branch of Realty and Records Services.*

[FR Doc. 97–3901 Filed 2–14–97; 8:45 am]

BILLING CODE 4310–33–P

## National Park Service

## Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the

Federal Advisory Committee Act (Pub. L. 92–463).

**MEETING DATE AND TIME:** Wednesday, February 19, 1997; 1:30 p.m. until 4:30 p.m.

**ADDRESSES:** Holland Art Collection, 111 N. 4th Street, Allentown, PA 18102.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

**SUPPLEMENTARY INFORMATION:** The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

**FOR FURTHER INFORMATION CONTACT:** Executive Director, Delaware and Lehigh Navigation Canal, National Heritage Corridor Commission, 10 E., Church Street, Room P–208, Bethlehem, PA 18018, (610) 861–9345.

Gerald R. Bastoni,

*Executive Director, Delaware and Lehigh Navigation Canal NHC Commission.*

[FR Doc. 97–4083 Filed 2–14–97; 8:45 am]

**BILLING CODE 6820–PE–M**

## Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR part 779 and the OSM–1 Form.

**DATES:** Comments on the proposed information collection must be received by April 21, 1997, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 120–SIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR part 779, Surface Mining Permit Applications—Minimum Requirements for Environmental Resources; and the OSM–1 Form, Coal Reclamation Fee Report.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

The following information is provided for each information collection: (1) title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

*Title:* Surface Mining Permit Applications—Minimum Requirements for Environmental Resources, 30 CFR 779.

*OMB Control Number:* 1029–0035.

*Summary:* Applicants for surface coal mining permits are required to provide adequate descriptions of the environmental resources that may be affected by proposed surface mining activities. The information will be used by the regulatory authority to determine if the applicant can comply with environmental protection performance standards.

*Bureau Form Number:* None.

*Frequency of Collection:* On occasion.

*Description of Respondents:* Coal mining companies.

*Total Annual Responses:* 500.

*Total Annual Burden Hours:* 39,185 hours.

*Title:* Coal Reclamation Fee Report—OSM–1 Form.

*OMB Control Number:* 1029–0063.

*Summary:* The information is used to maintain a record of coal produced for sale, transfer, or use nationwide each calendar quarter, the method of coal removal and the type of coal, and the basis for coal tonnage reporting in compliance with 30 CFR 870 and section 401 of P.L. 95–87. Individual reclamation fee payment liability is based on this information. Without the collection of information OSM could not implement its regulatory responsibilities and collect the fee.

*Bureau Form Number:* OSM–1.

*Frequency of Collection:* Quarterly.

*Description of Respondents:* Coal mine permittees.

*Total Annual Responses:* 15,900.

*Total Annual Burden Hours:* 4,307.

Dated: February 11, 1997.

Arthur W. Abbs,

*Chief, Division Of Regulatory Support.*

[FR Doc. 97–3896 Filed 2–14–97; 8:45 am]

**BILLING CODE 4310–05–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. 50.7, and Section 113(g) of the Clean Air Act, 42 U.S.C. 7413(g), notice is hereby given that on February 3, 1997, a proposed Consent Decree in *United States* v. *Aluminum Finishing Corporation*, Civil Case No. IP95–1703–CD–M/S, was lodged with the United States District Court for the Southern District of Indiana, Indianapolis Division. This consent decree represents a settlement of claims against Aluminum Finishing Corporation (''AFC'') for violations of the Clean Air Act, 42 U.S.C. 7413(b), and its implementing regulations, the Indiana State Implementation Plan (''SIP''). The complaint seeks injunctive relief and civil penalties for the AFC's operation of a metal parts and products coating operation in Indianapolis, Indiana, at which it caused, allowed or permitted the continued discharge of volatile organic compounds in excess of the emission limitations set forth in the Indiana SIP, in continued violation of the Clean Air Act and the Indiana SIP.

Under this settlement, AFC will pay the United States a civil penalty of

$50,000. In addition, the Consent Decree requires AFC to comply with the Clean Air Act and, in particular, to install and operate a thermal oxidizer to eliminate AFC's discharges of excess volatile organic compounds. The consent decree also requires monitoring, reporting and recordkeeping to ensure AFC will continue to comply and allow EPA to monitor AFC's compliance.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Aluminum Finishing Corporation,* D.J. No. 90–5–2–1–1913.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Indiana, Indianapolis Division, 46 East Ohio Street, Indianapolis, Indiana; at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Blvd. Chicago, Illinois; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 97–3827 Filed 2–14–97; 8:45 am]

**BILLING CODE 4410–15–M**

## Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *Formosa Plastics Corporation, Texas* was lodged on January 30, 1997 with the United States District Court for the Southern District of Texas. The proposed Consent Decree requires Formosa to pay a $150,000 civil penalty and conduct a Supplemental Environmental Project at its Point Comfort, Texas facility. The Supplemental Environmental Project includes the replacement of two ethylene dichloride cracking furnaces at Formosa's facility before the end of the useful life of the furnaces. Replacement of the furnaces before the end of the useful life of the equipment will reduce emissions from existing furnaces and reduce the amount of hazardous waste generated by the furnaces.

Contemporaneously with lodging the Consent Decree, the United States filed an action against Formosa pursuant to the Clean Air Act, 42 U.S.C. 7401 *et seq,* the Standards of Performance for New Stationary Sources, 40 C.F.R. Part 60, Subpart VV, and the National Emission Standards for Hazardous Air Pollutants, 40 C.F.R. Part 61, Subparts F, V, and FF. This action is based upon violations that occurred at Formosa's facility located in Point Comfort, Texas (''Formosa's facility'').

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to Civil Action No. 97–287, *United States* v. *Formosa Plastics Corporation, Texas,* DOJ Reference Number 90–5–2–1–2005.

The proposed Consent Decree may be examined at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue Dallas, Texas 75202; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

*Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.*

[FR Doc. 97–3828 Filed 2–14–97; 8:45 am]

**BILLING CODE 4410–15–M**

## Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that on February 6, 1997, a proposed Settlement Agreement of Environmental Claims and Issues (''Settlement Agreement'') in *In re Metallurgy, Inc. and Shieldalloy Metallurgical Corporation,* Bankr. Nos. 93 B 44468 (JLG) and 93 B 4446 (JLG), was lodged with the United States Bankruptcy Court for the Southern District of New York. This proposed Settlement Agreement resolves the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.,* on behalf of the U.S. Environmental Protection Agency (''EPA'') and the Department of Interior (''DOI''), and under the Resources Conservation and Recovery Act, as amended, 42 U.S.C. 6901, *et seq.* (''RCRA''), on behalf of EPA, relating to Shieldalloy's facilities in Cambridge, Ohio (the ''Cambridge Site'') and Newfield, New Jersey (the ''Newfield Site''). The Settlement Agreement also resolves claims with respect to licensing fees incurred by the Nuclear Regulatory Commission (''NRC'') pursuant to the Atomic Energy Act of 1974, as amended, 42 U.S.C. 2011, *et seq.*

As part of this Settlement Agreement, Shieldalloy and Metallurg will post approximately $22 million in cash and/or letters of credit to assure the completion of the Newfield Site cleanup which is currently in progress pursuant to an administrative order issued by the State of New Jersey. Shieldalloy and Cyprus Foote Mineral Company, the prior owner of the Cambridge Site, will also post approximately $11 million in cash, letters of credit, and an annuity to assure the completion of the cleanup of the Cambridge Site which is currently in progress pursuant to a consent order entered into between the State of Ohio and Shieldalloy.

In addition, the United States' claims against Shieldalloy for unreimbursed pre-petition response costs incurred at both Sites will be allowed as general unsecured claims (in the amount of $178,192.92 at the Newfield Site and $41,562.35 at the Cambridge Site), and the United States' claims against Shieldalloy for unreimbursed post-petition response costs incurred at the Sites will be allowed as administrative claims (in the amount $191,177.23 at the Newfield Site and $108,046.73 at the Cambridge Site). The Settlement Agreement also resolves the United States' claims for natural resource damages at the Sites. Shieldalloy will remediate wetlands present on the Newfield Site and create approximately 10 acres of wetlands in and around the Newfield Site. Shieldalloy will enhance, restore and/or preserve approximately 40 to 45 acres of wetlands in the vicinity of the Cambridge Site. The United States will also receive, on behalf of DOI, an allowed administrative claim in the amount of $4,714.67 for post-petition

natural resource damages assessment costs.

The United States will also receive a $497,000 allowed general unsecured claim for a RCRA civil penalty claim. The NRC will receive a general unsecured claim for its pre-petition licensing fees.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Settlement Agreement. The proposed Settlement Agreement may be examined at the Office of the United States Attorney, 100 Church St., 19th Floor, New York, New York 10007, at the Region II office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202) 624–0892. A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $13.00 for the Settlement Agreement payable to the Consent Decree Library.

Joel M. Gross,

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division*

[FR Doc. 97–3826 Filed 2–14–97; 8:45 am]

**BILLING CODE 4410–15–M**

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993; Ceramic Composite Aircraft Brake Consortium

Notice is hereby given that, on January 15, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Ceramic Composite Aircraft Brake Consortium (''CCAB'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the research and development venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identifies of the parties are Ohio Aerospace Institute, Cleveland, OH; AlliedSignal Aerospace, Phoenix, AZ; Aircraft Braking Systems Corporation, Akron, OH; Parker Hannefin Corporation, Irvine, CA and BF Goodrich Aerospace, Brecksville, OH. CCAB is dedicated to researching and developing the application of ceramic matrix materials to aircraft braking systems.

Membership in this project remains open, and CCAB intends to file additional written notification disclosing all changes in membership. Information regarding participation in CCAB may be obtained from Eileen Pickett, Ohio Aerospace Institute, Cleveland, OH.

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 97–3830 Filed 2–14–97; 8:45 am]

**BILLING CODE 4410–11–M**

### National Cooperative Research Notification; Southwest Research Institute; Correction

In notice document 96–31547, regarding the Southwest Research Institute, appearing, on page 65421 in the issue of Thursday, December 12, 1996, make the following correction:

In the first column, in the heading, in the third line, the year ''1995'' should read ''1993''.

Constance K. Robinson,

*Director of Operations, Antitrust Division.*

[FR Doc. 97–3829 Filed 2–14–97; 8:45 am]

**BILLING CODE 4410–11–M**

## Foreign Claims Settlement Commission

**[F.C.S.C. Meeting Notice No. 3–97]**

### Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

*Date and Time:* Monday, February 24, 1997, 10:00 a.m.

*Subject Matter:* 1. Consideration of Proposed Decisions on claims against Albania

2. Hearings on the record on objections to Proposed Decisions in the following claims against Albania:

ALB–010—Peter Panos
ALB–015—Sophocles Panagiotis
ALB–032, ALB–034, ALB–035, and ALB–043—Cleopatra Karselas, Eftalia Maliou, George Karselas, and Olga Dntule
ALB–045—Vangjo Gregori
ALB–067—Zhaneta Faber
ALB–092—Thanas Laske
ALB–117—James Elias
ALB–122—Vaios Karagiannis
ALB–123—Thomas S. Kalyvas
ALB–124—Elias Kalyvas
ALB–146—Constance Z. Zotos and Cleopatra Bizoukas
ALB–151—Victoria Gallani
ALB–178—Hariklia Zoto
ALB–210—Aristokli P. Cifligu
ALB–216—Rita Deto Sefla
ALB–217—Arthur Generalis
ALB–221—Dimetra A. Gregory
ALB–238—Edward Mehmet
ALB–244—Near East Foundation
ALB–278—Violet K. Veli

*Status:* Open

Subject matter not disposed of at the scheduled meeting may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, February 12, 1997.

Judith H. Lock,

*Administrative Officer.*

[FR Doc. 97–3999 Filed 2–13–97; 9:40 am]

**BILLING CODE 4410–01–P**

## Office of Justice Programs

**[OJP (OVC) No. 1113]**

**RIN 1121–ZA60**

### Victims of Crime Act Victim Assistance Grant Program

**AGENCY:** Office of Justice Programs, Office for Victims of Crime, Justice.

**ACTION:** Proposed program guidelines.

**SUMMARY:** The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), is publishing Proposed Program Guidelines to implement the victim assistance grant program as authorized by the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601, *et seq.* (hereafter referred to as VOCA).

**DATES:** These guidelines are effective from October 1, 1996 (Federal Fiscal Year 1997 VOCA grant program), until further revised by OVC. The comments period on these guidelines closes on March 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jackie McCann Cleland, Director, State

Compensation and Assistance Division, 633 Indiana Avenue, NW., Washington, DC 20531; telephone number (202) 307–5983. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The comment period for the following Proposed Guidelines for the Victim of Crime Act (VOCA) Victim Assistance Grant Program will end 14 days after the date of this publication. The Office for Victims of Crime (OVC) is expediting the comment period for two reasons. First, a longer comment period will impose a burden on many states, who having received their largest-ever VOCA grant awards, are now reluctant to begin distributing the funds to victim assistance agencies without formal direction, in the form of Program Guidelines, from OVC. Second, OVC began the process of soliciting suggestions for modifying the current Final Guidelines several months ago. In the interest of reaching a more diverse audience and making the review and comment process more convenient for victim service advocates and providers, in late November of 1996, OVC mailed copies of the Proposed Guidelines to all of the state VOCA victim assistance and victim compensation program administrators, as well as to the representatives of approximately 20 national crime victim advocacy organizations. In early December, the Proposed Guidelines were posted on the Internet for review and comment by all interested parties. OVC already has received over thirty recommendations, questions, and comments from VOCA administrators and other victim advocates via telephone, mail, fax, and e-mail.

VOCA authorizes federal financial assistance to states for the purpose of compensating and assisting victims of crime, providing funds for training and technical assistance, and assisting victims of federal crimes. These Program Guidelines provide information on the administration and implementation of the VOCA victim assistance grant program as authorized in section 1404 of VOCA, Public Law 98–473, as amended, codified at 42 U.S.C. 10603, and contain information on the following: *Summary of the Comments to the Proposed Final Program Guidelines; Background; Allocation of VOCA Victim Assistance Funds; VOCA Victim Assistance Application Process; Program Requirements; Financial Requirements; Monitoring; and Suspension and Termination of Funding.* The Guidelines are based on the experience gained and legal opinions rendered since the inception of the grant program in 1986, and are in accordance with VOCA. These Proposed Program Guidelines are all inclusive. Thus, they supersede any Guidelines previously issued by OVC.

The Office of Justice Programs, Office for Victims of Crime, in conjunction with the Office of Policy Development, DOJ, and the Office of Information and Regulatory Affairs, the Office for Management and Budget (OMB), has determined that these Guidelines do not represent a ''significant regulatory action'' for the purposes of Executive Order 12866 and, accordingly, these Program Guidelines were not reviewed by OMB.

In addition, these Program Guidelines will not have a significant economic impact on a substantial number of small entities; therefore, an analysis of the impact of these rules on such entities is not required by the Regulatory Flexibility Act, codified at 5 U.S.C. 601, *et seq.*

The program reporting requirements described in the *Program Requirements* section have been approved by OMB as required under the Paperwork Reduction Act, 44 U.S.C. 3504(h). (OMB Approval Number 1121–0014)

Summary of the Revisions to the 1997 Program Guidelines

As the result of the comments from the field, recent legislative amendments to VOCA, and modifications of applicable federal regulations, substantive changes were made to five sections of the Guidelines, including: The *Availability of Funds,* the *Application Process,* the *Program Requirements,* the *Program Reporting Requirements,* and the *Financial Requirements.* These changes are summarized in the paragraphs below, and incorporated into the complete text of the *Proposed Program Guidelines for Victim Assistance Grants.* The Program Guidelines also include several technical corrections that are not listed in this summary because they do not affect policy or implementation of the Guidelines.

*A. Comments From the Field*

Over time, OVC received comments from VOCA state administrators, victim service providers, representatives of national victim organizations, and other victim advocates regarding the current Program Guidelines, issued in October 1995. In total, over 15 different recommendations, questions, and comments were received. These comments were helpful in formulating the revisions constituting the subject Proposed Victim Assistance Guidelines.

1. Definition of Elder Abuse. Under Section IV. Program Requirements, Part A. Grantee Eligibility Requirements—the definition of ''elder abuse'' has been modified, so that it now focuses on describing the offense, rather than on characterizing the victim. Hence, the definition, ''abuse of vulnerable adults,'' has been changed to ''the mistreatment of older persons through physical, sexual, or psychological violence; neglect; or economic exploitation and fraud.''

2. Identifying Underserved Victims of Crime. Under Section IV. Program Requirements, Part A. Grantee Eligibility Requirements, the language of the Proposed Guidelines has been modified to encourage states to identify gaps in available services, not just by the types of crimes committed, but also by specific demographic profiles such as those victims living in rural or remote areas, or in inner cities, or by the specific characteristics of the victim population needing services, such as disabled or elderly victims.

3. New Programs. There was confusion about OVC's intention regarding the funding of new crime victim programs. Hence, language has been added to the Proposed Guidelines clarifying that new programs that have not yet demonstrated a record of providing services may be eligible to receive VOCA funding if they can demonstrate financial support from non-federal sources.

4. Unfunded Mandates. Recently, many state legislatures have passed laws establishing important new rights for crime victims. OVC wishes to clarify that VOCA funds may be used for the purpose of implementing these laws. Therefore, restrictive language from the previous Guidelines has been eliminated. Please note that VOCA crime victim assistance funds still may not be used to supplant state and local funds that would otherwise be available for crime victim services.

5. State Grantees as Subrecipients. Under Section IV. Program Requirements, Part C. Eligible Subrecipient Organizations, the Program Guidelines have been modified with regard to subgrants to state grantees. Since the intention of the VOCA grant program is to support and enhance the crime victim services provided by community agencies, state grantees that meet the definition of an eligible subrecipient organization may not award themselves more than 10 percent of their annual VOCA award.

6. Emergency Legal Assistance. Under Section IV, Program Requirements, Part D. Services, Activities, and Costs at the Subrecipient Level, the Proposed Guidelines have been modified to allow subgrantees discretion in providing

victims of domestic violence with legal assistance such as child custody and visitation proceedings ''when such actions are directly connected to family violence cases and pertain to the health and safety of the victim.'' The allowable ''Contracts for Professional Services'' section also has been modified to include assistance with emergency custody and visitation proceedings.

7. Advanced Technologies. In the Proposed Guidelines, OVC offers the states clarification and further guidance on the use of VOCA funds for advanced technologies such as computers and victim notification systems.

8. Electronic Submission of Subgrant Award Reports. In the interest of meeting OVC's mandate to collect and maintain accurate and timely information on the disbursal of VOCA funds, state grantees will now be required to transmit their Subgrant Award Report information to OVC via the automated subgrant dial-in system. Beginning with the Federal Fiscal Year (FFY) 1997 VOCA grant award, OVC will no longer accept manual submission of the Subgrant Award Reports. By utilizing the subgrant dial-in 1–800 number, grantees can access the system without incurring a long distance telephone charge. States and territories outside of the continental U.S. are exempt from the requirement to use the subdial system, but these grantees must complete and submit the Subgrant Award Report form, OJP 7390/2A, for each VOCA subrecipient.

*B. Legislative Changes*

1. The Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132).

The Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132) (hereafter, ''The Antiterrorism Act''), was signed into law on April 24, 1996. This legislation contained a number of victim related provisions that amended VOCA, including four provisions concerning the ''Availability of (VOCA victim assistance) Grant Funds.''

a. The Antiterrorism Act increases the base amount for victim assistance grants from $200,000 to $500,000. The territories of Northern Mariana Islands, Guam, and American Samoa will continue to receive a base amount of $200,000, with the Republic of Palau's share governed by the Compact of Free Association between the U.S. and the Republic of Palau.

b. OVC Reserve Fund. The Antiterrorism Act authorizes the OVC Director to establish a reserve fund, up to $50 million. Reserve fund monies may be used for supplemental grants to assist victims of terrorist acts or mass violence occurring within or outside the U.S. The OVC Director may award reserve funds to the following entities:

(1) States for providing compensation and assistance to their state residents, who, while outside of the borders of the U.S., become victims of a terrorist act or mass violence. The beneficiaries, however, cannot be persons who are already eligible for compensation under the Omnibus Diplomatic Security and Antiterrorism Act of 1986. Individuals covered under the Omnibus Diplomatic Security Act include those who are taken captive because of their relationship with the U.S. government as a member of the U.S. Civil Service, as well as other U.S. citizens, nationals, or resident aliens who are taken captive while rendering service to the U.S. similar to that of civil servants. Dependent family members of such persons also are covered under the Act.

(2) Eligible state crime victim compensation and assistance programs for providing compensation and emergency relief for the benefit of victims of terrorist acts or mass violence occurring within the U.S.

(3) U.S. Attorneys' Offices for use in coordination with state victim compensation and assistance efforts in providing relief to victims of terrorist acts or mass violence occurring within the U.S.

(4) Eligible state compensation and assistance programs to offset fluctuation in the funds during years in which the Fund decreases and additional monies are needed to stabilize funding for state programs.

c. Unobligated Grant Funds. Beginning with FFY 1997 VOCA grants, funds not obligated by the end of the grant period, up to a maximum of $500,000, will be returned to the Fund, and not to the General Treasury, as was the practice in previous years. Returned funds in excess of $500,000 in a given year shall be returned to the Treasury. Once any portion of a state's grant is returned to the Fund, the funds must be redistributed according to the formula established by VOCA and the Proposed Program Guidelines. States are encouraged to monitor closely the expenditure of VOCA funds throughout the grant period to avoid returning grant monies to OVC and/or the Treasury.

d. Grant Period Extended. The Antiterrorism Act extended the VOCA victim assistance grant period from the year of award plus one, to the year of award plus two. (Subsequent legislation further extended the grant period to the year of award, plus three.)

2. Omnibus Consolidated Appropriations Act of 1997. The Omnibus Consolidated Appropriations Act of 1997 (Pub. L. 104–208) was passed by Congress and signed into law by President Clinton in September 30, 1996. This Act further extended the grant period to the year of award plus three. This change is effective for all FFY 1997 grants. The Proposed Program Guidelines clarify that funds are available for obligation beginning October 1 of the year of the award, through September 30 of the FFY three years later. For example, grants awarded in November, 1996 (FFY 1997) are available for obligation beginning October 1, 1996 through September 30, 2000.

This modification is contained in the ''Availability of Funds'' section of the Proposed Program Guidelines.

*C. Changes in Applicable Federal Regulations*

1. Mandatory Enrollment in U.S. Treasury Department's Automated Clearing House (ACH) Vendor Express Program. In accordance with the Debt Collection Improvement Act of 1996, the U.S. Treasury Department revised its regulations regarding federal payments. The Proposed Program Guidelines have been modified to require that, effective July 26, 1996, all federal payments to state VOCA victim assistance and compensation grantees must be made via electronic funds transfer.

States that are new award recipients or those that have previously received funds in the form of a paper check from the U.S. Treasury, must enroll in the Treasury Department's ACH Vendor Express program (through OJP) before requesting any federal funds. This means that VOCA grantees can no longer receive drawdowns against their awards via paper check mailed from the Treasury. Grant recipients must enroll in ACH for Treasury to electronically transfer drawdowns directly to their banking institutions. States that are currently on the Letter of Credit Electronic Certification System (LOCES) will be automatically enrolled in the ACH program. Enrollment forms will be included in the award packet. Enrollment in ACH need only be completed once. This modification is included in the ''Application Process'' section of the Proposed Program Guidelines.

2. Higher Audit Threshold. In response to suggestions made by many recipients of federal grant awards, including VOCA grant recipients, OMB Circular A–133 is being revised. Until the revisions are final, state and local government agencies that receive $100,000 or more in federal funds during their state fiscal year are required to submit an organization-wide financial

and compliance audit report. Recipients of $25,000 to $100,000 in federal funds are required to submit a program-or organization-wide audit report as directed by the granting agency. Recipients receiving less than $25,000 in federal funds are not required to submit a program-or organization-wide financial and compliance audit report for that year. Nonprofit organizations and institutions of higher education that expend $300,000 or more in federal funds per year shall have an organization-wide financial and compliance audit. Grantees must submit audit reports within 13 months after their state fiscal year ends.

Previously, states that received $100,000 or more in federal financial assistance in any fiscal year were required to have a single audit for that year. States and subrecipients receiving at least $25,000, but less than $100,000, in a fiscal year had the option of performing a single audit or an audit of the federal program, and state and local governments receiving less than $25,000 in any fiscal year were exempt from audit requirements. This modification is contained in the ''Financial Requirements'' section of the Proposed Program Guidelines.

## Guidelines for Crime Victim Assistance Grants

### *I. Background*

In 1984, VOCA established the Crime Victims Fund (Fund) in the U.S. Treasury and authorized the Fund to receive deposits of fines and penalties levied against criminals convicted of federal crimes. This Fund provides the source of funding for carrying out all of the activities authorized by VOCA.

OVC makes annual VOCA crime victim assistance grants from the Fund to states. The primary purpose of these grants is to support the provision of services to victims of violent crime throughout the Nation. For the purpose of these Program Guidelines, services are defined as those efforts that (1) respond to the emotional and physical needs of crime victims; (2) assist primary and secondary victims of crime to stabilize their lives after a victimization; (3) assist victims to understand and participate in the criminal justice system; and (4) provide victims of crime with a measure of safety such as boarding-up broken windows and replacing or repairing locks.

For the purpose of the VOCA crime victim assistance grant program, a crime victim is a person who has suffered physical, sexual, or emotional harm as a result of the commission of a crime.

VOCA gives latitude to state grantees to determine how VOCA victim assistance grant funds will best be used within each state. However, each state grantee must abide by the minimal requirements outlined in VOCA and these Program Guidelines.

### II. Allocation of VOCA Victim Assistance Funds

#### *A. Distribution of the Crime Victims Fund*

OVC administers the deposits made into the Fund for programs and services, as specified in VOCA. The amount of funds available for distribution each year is dependent upon the total deposits into the Fund during the preceding Federal Fiscal Year (October 1 through September 30).

The Federal Courts Administration Act of 1992 removed the cap on the Fund, beginning with FFY 1993 deposits. This Act also eliminated the need for periodic reauthorization of VOCA and the Fund. Thus, under current legislation, the Fund will continue to receive deposits.

Pursuant to section 1402 (d) of VOCA, deposits into the Fund will be distributed as follows:

1. The first $3,000,000 deposited in the Fund in each fiscal year is available to the Administrative Office of the U.S. Courts for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of Title 18 U.S. Code.

2. Of the next $10,000,000 deposited in the Fund in a particular fiscal year,

a. 85% shall be available to the Secretary of Health and Human services for grants under Section 4(d) of the Child Abuse Prevention and Treatment Act for improving the investigation and prosecution of child abuse cases;

b. 15% shall be available to the Director of the Office for Victims of Crime for grants under section 4(d) of the Child Abuse Prevention and Treatment Act for assisting Native American Indian tribes in developing, establishing, and operating programs to improve the investigation and prosecution of child abuse cases.

3. Of the remaining amount deposited in the Fund in a particular fiscal year,

a. 48.5% shall be available for victim compensation grants,

b. 48.5% shall be available for victim assistance grants; and

c. 3% shall be available for demonstration projects and training and technical assistance services to eligible crime victim assistance programs and for the financial support of services to victims of federal crime by eligible crime victim assistance programs.

#### *B. Availability of Funds*

1. VOCA Victim Assistance Grant Formula. All states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and Palau (hereinafter referred to as ''states'') are eligible to apply for, and receive, VOCA victim assistance grants. See section 1404(d)(1) of VOCA, codified at 42 U.S.C. 10603(d)(1).

2. Reserve Fund. As the result of provisions in the Antiterrorism Act amending VOCA, the OVC Director is authorized to retain funds in a reserve fund, up to $50 million. The Director may utilize the reserve funds in order to:

a. Award supplemental grants to assist victims of terrorist acts or mass violence outside or within the U.S. The OVC Director may grant reserve funds for such purposes to the following entities:

(1) States for providing compensation and assistance to their state residents, who while outside of the U.S. become victims of a terrorist act or mass violence. The beneficiaries, however, cannot be persons who are already eligible for compensation under the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

Individuals covered under the Omnibus Diplomatic Security and Antiterrorism Act include persons who are taken captive because of their relationship with the U.S. Government as a member of the U.S. Civil Service, as well as other U.S. citizens, nationals, or resident aliens who are taken captive while rendering service to the U.S. similar to that of civil servants. Dependent family members of such persons also are covered under the Omnibus Diplomatic Security Act.

(2) Eligible state crime victim compensation and assistance programs for providing emergency relief, including crisis assistance, training, and technical assistance for the benefit of victims of terrorist acts or mass violence occurring within the U.S.

(3) U.S. Attorney's Offices for use in coordination with state victim compensation and assistance efforts in providing relief to victims of terrorist acts or mass violence occurring within the U.S.

b. Offset Fluctuations in Fund. The Director of OVC may also use the reserve fund to offset fluctuations in Fund deposits for state compensation and assistance programs in years in which the Fund decreases and additional monies are needed to stabilize programs.

3. Grant Period. Federal legislation passed in 1996 also makes victim

assistance grant funds available for expenditure throughout the FFY of award as well as in the next three fiscal years. The FFY begins on October 1 and ends on September 30. For example, grants awarded in December, 1996 (FFY 1997) are available for obligation beginning October 1, 1996 through September 30, 2000.

4. Grant Deobligations. VOCA grant funds not obligated at the end of the award period will be returned to the Crime Victims Fund. In a given fiscal year, no more than $500,000 of the remaining unobligated funds can be returned to the Fund. Amounts in excess of $500,000 shall be returned to the Treasury. Once any portion of a state's grant is returned to the Fund, the funds must be redistributed according to the rules established by VOCA and the Proposed Program Guidelines, so states are encouraged to monitor closely the expenditure of VOCA funds throughout the grant period to ensure that no funds are returned.

*C. Allocation of Funds to States*

From the Fund deposits available for victim assistance grants, each state grantee receives a base amount of $500,000, except for the territories of Northern Mariana Islands, Guam, and American Samoa, which are eligible to receive a base amount of $200,000. The Republic of Palau's share is governed by the Compact of Free Association between the U.S. and the Republic of Palau. The remaining Fund deposits are distributed to each state, based upon the state's population in relation to all other states, as determined by current census data.

*D. Allocation of Funds Within the States*

The Governor of each state designates the state agency that will administer the VOCA victim assistance grant program. The designated agency establishes policies and procedures, which must meet the minimum requirements of VOCA and the Program Guidelines.

VOCA funds granted to the states are to be used by eligible public and private nonprofit organizations to provide direct services to crime victims. States have sole discretion for determining which organizations will receive funds, and in what amounts, as long as the recipients meet the requirements of VOCA and the Program Guidelines.

State grantees are encouraged to develop a VOCA program funding strategy, which should consider the following: The range of victim services throughout the state and within communities; the unmet needs of crime victims; the demographic profile of crime victims; the coordinated, cooperative response of community organizations in organizing services for crime victims; the availability of services to crime victims throughout the criminal justice process; and the extent to which other sources of funding are available for services.

State grantees are encouraged to expand into new service areas as needs and demographics of crime change within the state. For example, when professional training, counseling, and de-briefings are made available to victim assistance providers, dispatchers, and law enforcement officers in rural-remote areas, services to victims in these areas improve dramatically. Victim services in rural-remote areas can also be improved by using VOCA funds to support electronic networking through computers, police radios, and cellular phones.

Many state grantees use VOCA funds to stabilize victim services by continuously funding selected organizations. Some state grantees end funding to organizations after several years in order to fund new organizations. Other state grantees limit the number of years an organization may receive VOCA funds. These practices are within the grantee's discretion and are supported by OVC, when they serve the best interests of crime victims within the state.

State grantees may award VOCA funds to organizations that are physically located in an adjacent state, when it is an efficient and cost-effective mechanism available for providing services to victims who reside in the awarding state. When adjacent state awards are made, the amount of the award must be proportional to the number of victims to be served by the adjacent-state organization. OVC recommends that grantees enter into an interstate agreement with the adjacent state to address monitoring of the VOCA subrecipient, auditing federal funds, managing noncompliance issues, and reporting requirements. States must notify OVC of each VOCA award made to an organization in another state.

## III. VOCA Victim Assistance Application Process

*A. State Grantee Application Process*

Each year, OVC issues a Program Instruction and Application Kit to each designated state agency. The Application Kit contains the necessary forms and information required to apply for VOCA grant funds, including the Application for Federal Assistance, Standard Form 424. The amount for which each state may apply is included in the Application Kit. At the time of application, state grantees are not required to provide specific information regarding the subrecipients that will receive VOCA victim assistance funds.

Completed applications must be submitted on or before the stated deadline, as determined by OVC.

In addition to the Application for Federal Assistance, state grantees shall submit the following information:

1. Single Audit Act Information, specifically, the name and address of the designated Cognizant federal Agency, the federal agency assigned by OMB, and the dates of the state fiscal year.

2. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace requirements; Civil Rights Compliance, and any other certifications required by OJP and OVC. In addition, states must complete a disclosure form specifying any lobbying activities that are conducted.

3. An assurance that the program will comply with all applicable nondiscrimination requirements.

4. An assurance that in the event a federal or state administrative agency makes a finding of discrimination after a due process hearing, on the grounds of race, color, religion, origin, sex, or disability against the program, the program will forward a copy of the finding to OJP, Office for Civil Rights (OCR).

5. The name of the Civil Rights contact person who has lead responsibility for ensuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with OCR.

6. Enrollment in Automated Clearing House (ACH). States that are new award recipients, or those that have previously received funds in the form of a paper check from the U.S. Treasury, must enroll in the Treasury Department's ACH Vendor Express program before requesting any federal funds. States that are currently on the Letter of Credit Electronic Certification System (LOCES) will be automatically enrolled in the ACH program. Enrollment in ACH need only be completed once.

7. Administrative Cost Provision Notification. States must indicate in their application materials whether they intend to use the administrative cost provision. More is explained about this issue in the following section.

*B. Administrative Cost Provision for State Grantees*

Each state grantee may retain up to, but not more than, 5% of each year's grant for administering the VOCA victim assistance grant at the state

grantee level with the remaining portion being used exclusively for direct services to crime victims or to train direct service providers in accordance with these Program Guidelines, as authorized in section 1404(b)(3), codified at 42 U.S.C. 10603 (b)(3). This option is available to the state grantee and does not apply to VOCA subrecipients. State grantees are not required to match the portion of the grant that is used for administrative purposes. The state administrative agency may charge any federally approved indirect cost rate to this grant. However, any direct costs requested must be paid from the 5 percent administrative funds. An indirect cost rate and cost allocation plan must be on file or submitted and approved by the U.S. Department of Justice prior to budgeting funds for such costs.

This administrative cost provision is to be used by the state grantee to expand, enhance, and/or improve the state's previous level of effort in administering the VOCA victim assistance grant program at the state level and to support activities and costs that impact the delivery and quality of services to crime victims throughout the state. Thus, grantees will be required to certify that VOCA administrative funds will not be used to supplant state funds or to cover indirect costs.

State grantees will not be in violation of the nonsupplantation clause if there is a decrease in the state's previous financial commitment towards the administration of the VOCA grant programs in the following situations: (1) A serious loss of revenue at the state level, resulting in across-the-board budget restrictions. (2) A decrease in the number of ''state-supported'' staff positions used to meet the state's ''maintenance of effort'' in administering the VOCA grant programs.

States are required to notify OVC if there is a decrease in the amount of its previous financial commitment to the cost of administering the VOCA program.

State grantees are not required to match the portion of the grant that is used for administrative purposes.

1. The following are examples of activities that are directly related to managing the VOCA grant and can be supported with administrative funds:

a. Pay salaries and benefits for staff and consultant fees to administer and manage the financial and programmatic aspects of VOCA;

b. Attend OVC-sponsored and other relevant technical assistance meetings that address issues and concerns to state administration of victims' programs;

c. Monitor VOCA Victim Assistance subrecipients, Victim Assistance in Indian Country subrecipients, and potential subrecipients, provide technical assistance, and/or evaluation and assessment of program activities;

d. Purchase equipment for the state grantee such as computers, software, fax machines, copying machines;

e. Train VOCA direct service providers;

f. Purchase memberships in crime victims organizations and victim-related materials such as curricula, literature, and protocols; and

g. Pay for program audit costs.

2. The following activities impact the delivery and quality of services to crime victims throughout the state and, thus, can be supported by administrative funds:

a. Develop strategic plans on a state and/or regional basis, conduct surveys and needs assessments, promote innovative approaches to serving crime victims such as through the use of technology;

b. Improve coordination efforts on behalf of crime victims with other OJP Offices and Bureaus and with federal, state, and local agencies and organizations;

c. Provide training on crime victim issues to state, public, and nonprofit organizations that serve or assist crime victims such as law enforcement officials, prosecutors, judges, corrections personnel, social service workers, child and youth service providers, and mental health and medical professionals;

d. Purchase, print, and/or develop publications such as training manuals for service providers, victim services directories, and brochures;

e. Coordinate and develop protocols, policies, and procedures that promote systemic change in the ways crime victims are treated and served; and

f. Train managers of victim service agencies.

State grantees are required to notify OVC of the decision to use administrative funds prior to charging or incurring any costs against this provision. State grantees may notify OVC when the decision is made to exercise this option or at the time the Application for Federal Assistance is submitted.

Each state grantee that chooses to use administrative funds is required to submit a statement to OVC describing:

(1) The amount of the total grant that will be used as administrative funds;

(2) An itemization of the state grantee's projected expenditures and the types of activities that will be supported; and

(3) How these activities will improve the administration of the VOCA program and/or improve services to crime victims.

A state may modify projections set forth in their application by providing OVC with a revised description of their planned use of administrative funds in writing, subsequent to submitting their annual application. However, the revised description must be reviewed prior to the obligation of any federal funds. Failure to notify OVC of modifications will prevent the state from meeting its obligation to reconcile its State-wide Report with its Final Financial Status Report.

Administrative grant funds can only support that portion of a staff person's time devoted to the VOCA assistance program. If the staff person has other functions, the proportion of their time spent on the VOCA assistance program must be documented using regular time and attendance records. The documentation must provide a clear audit trail for the expenditure of grant funds.

State grantees may choose to award administrative funds to a ''conduit'' organization that assists in selecting qualified subrecipients and/or reduces the state grantee's administrative burden in implementing the grant program. However, the use of a ''conduit'' organization does not relieve the state grantee from ultimate programmatic and financial responsibilities.

*C. Use of Funds for Training*

State grantees have the option of retaining a portion of their VOCA victim assistance grant for conducting state-wide and/or regional trainings of victim services staff. The maximum amount permitted for this purpose is $5,000 or one percent of the state's grant, whichever is greater. State grantees that choose to sponsor statewide or regional trainings are not precluded from awarding VOCA funds to subrecipients for other types of staff development.

Statewide or regional training supported with training funds should target a diverse audience of victim service providers and allied professionals, and should provide opportunities to consider issues related to types of crime, gaps in services, coordination of services, and legislative mandates.

Each training activity must occur within the grant period, and all training costs must be obligated prior to the end of the grant period. VOCA grant funds cannot be used to supplant the cost of existing state administrative staff or related state training efforts.

Specific criteria for applying for training funds will be given in each year's Application Kit. This criteria may include addressing the goals, the needs of the service providers, how funds will be used, and how any program income that is generated will be used.

The VOCA funds used for training by the state grantee must be matched at 20 percent, cash or in-kind, and the source of the match must be described.

IV. Program Requirements

*A. State Grantee Eligibility Requirements*

When applying for the VOCA victim assistance grant, state grantees are required to give assurances that the following conditions or requirements will be met:

1. Must Be an Eligible Organization. Only eligible organizations will receive VOCA funds and these funds will be used only for services to victims of crime, except those funds that the state grantee uses for training victim service providers and/or administrative purposes, as authorized by section 1404(b) codified at 42 U.S.C. 10603(b). See section *E. Services, Activities, and Costs at the Subrecipient Level* for examples of direct services to crime victims.

2. Nonsupplantation. VOCA crime victim assistance grant funds will be used to enhance or expand services and will not be used to supplant state and local funds that would otherwise be available for crime victim services. See section 1404(a)(2)(c), codified at 42 U.S.C. 10603(a)(2)(C). This supplantation clause applies to state and local public agencies only.

3. Priority Areas. Priority shall be given to victims of sexual assault, spousal abuse, and child abuse. Thus, a minimum of 10% of each FFY's grant (30% total) will be allocated to each of these categories of crime victims. This grantee requirement does not apply to VOCA subrecipients.

Each state grantee must meet this requirement, unless it can demonstrate to OVC that: (1) A ''priority'' category is currently receiving significant amounts of financial assistance from the state or other funding sources; (2) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program; and (3) crime rates for a ''priority'' category have diminished.

4. ''Previously Underserved'' Priority Areas. An additional 10% of each VOCA grant will be allocated to victims of violent crime (other than ''priority'' category victims) who were ''previously under served.'' These under served victims of either adult or juvenile offenders may include, but are not limited to, victims of federal crimes; survivors of homicide victims; or victims of assault, robbery, gang violence, hate and bias crimes, intoxicated drivers, bank robbery, and elder abuse.

For the purposes of this program, a victim of federal crime is a victim of an offense that violates a federal criminal statute or regulation. Federal crimes also include crimes that occur on an area where the federal government has jurisdiction, such as Indian reservations and military installations.

For the purposes of this program, elder abuse is defined as the mistreatment of older persons through physical, sexual, psychological or physical violence; neglect; or economic exploitation and fraud.

To meet the under served requirement, grantees must identify crime victims by type of crime. States are encouraged, however, to identify gaps in available services not just by types of crimes committed, but also by specific demographic profiles, such as those victims living in rural areas, remote areas, or inner cities, or by the specific characteristics of the victim population needing services, such as disabled, or elderly victims. Each state grantee has latitude for determining the method for identifying ''previously under served'' crime victims, which may include public hearings, needs assessments, task forces, and meetings with state-wide victim services agencies.

Each state grantee must meet this requirement, unless it can justify to OVC that (a) services to these victims of violent crime are receiving significant amounts of financial assistance from the state or other funding sources; (b) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program; and (c) crime rates for these victims of violent crime have diminished.

5. Financial Record Keeping and Program Monitoring. Appropriate accounting, auditing, and monitoring procedures will be used at the grantee and subrecipient levels so that records are maintained to ensure fiscal control, proper management, and efficient disbursement of the VOCA victim assistance funds, in accordance with the OJP Financial Guide, effective edition.

6. Compliance with Federal Laws. Compliance with all federal laws and regulations applicable to federal assistance programs and with the provisions of Title 28 of the Code of Federal Regulations (CFR) applicable to grants.

7. Compliance with VOCA. Compliance by the state grantee and subrecipients with the applicable provisions of VOCA and the Proposed Program Guidelines.

8. Required Reports Submitted to OVC. Programmatic and financial reports shall be submitted. (See *Program Requirements* and *Financial Requirements* for reporting requirements and timelines.)

9. Civil Rights. Prohibition of Discrimination for Recipients of Federal Funds. No person in any state shall, on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity receiving federal financial assistance, pursuant to the following statutes and regulations: Section 809(c), Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d, and Department of Justice Nondiscrimination Regulations, 28 CFR part 42, subparts C, D, E, and G; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Subtitle A, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* and Department of Justice regulations on disability discrimination, 28 CFR part 35 and part 39; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681–1683; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*

10. Obligation to Report Discrimination Finding. In the event a federal or state court or administrative agency makes a finding of discrimination on the grounds of race, religion, national origin, sex, or disability against a recipient of VOCA victim assistance funds, state grantees are required to forward a copy of the finding to the Office for Civil Rights (OCR) for OJP.

11. Obligation to Report Other Allegations/Findings. In the event of a formal allegation or a finding of fraud, waste, and/or abuse of VOCA funds, state grantees are required to immediately notify OVC of said finding. State grantees are also obliged to apprise OVC of the status of any on-going investigations.

OVC encourages state grantees to coordinate their activities with their state's VOCA compensation program and the U.S. Attorneys' Offices and FBI Field Offices within their state. Only with an emphasis on coordination, will a continuum of services be ensured for

all crime victims. Coordination strategies could include inviting Compensation Program Directors and Federal Victim-Witness Coordinators to serve on subgrant review committees; providing Compensation Program Directors and Coordinators with a list of VOCA-funded organizations; attending meetings organized by Compensation Program Directors and Coordinators regarding the provision of victim assistance services; providing training activities for subrecipients to learn about the compensation program; developing joint guidance, where applicable, on third-party payments to VOCA assistance organizations; and providing training for compensation program staff on the trauma of victimization.

*B. Subrecipient Organization Eligibility Requirements*

VOCA establishes eligibility criteria that must be met by all organizations that receive VOCA funds. These funds are to be awarded to subrecipients only for providing services to victims of crime through their staff. Each subrecipient organization shall meet the following requirements:

1. Public or Nonprofit Organization. To be eligible to receive VOCA funds, organizations must be operated by public or nonprofit organization, or a combination of such organizations, and provide services to crime victims.

2. Record of Effective Services. Demonstrate a record of providing effective services to crime victims. This includes having the support and approval of its services by the community, a history of providing direct services in a cost-effective manner, and financial support from other sources.

3. New Programs. Those programs that have not yet demonstrated a record of providing services may be eligible to receive VOCA funding, if they can demonstrate financial support from non-federal sources.

4. Program Match Requirements. Match is to be committed for each VOCA-funded project and derived from resources other than federal funds and/or resources, except as provided in Chapter 2, paragraph 14, of the OJP Financial Guide, effective edition.

All funds designated as match are restricted to the same uses as the VOCA victim assistance funds and must be expended within the grant period. Because of this requirement, VOCA subrecipients must maintain records which clearly show the source, the amount, and the period during which the match was expended. Therefore, organizations are encouraged not to commit excessive amounts of match. Match requirements are a minimum of 20%, cash or in-kind, of the total VOCA project (VOCA grant plus match) except as follows:

a. The match for new or existing VOCA subrecipients that are Native American tribes/organizations located on reservations is 5%, cash or in-kind, of the total VOCA project (VOCA grant plus match.) For the purposes of this grant, a Native American tribe/organization is defined as any tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the U.S. to Native Americans because of their status as Native Americans. A reservation is defined as a tract of land set aside for use of, and occupancy by, Native Americans.

b. Subrecipients located in the U.S. Virgin Islands, and all other territories and possessions of the U.S. except Puerto Rico are not required to match the VOCA funds. See 48 U.S.C. 1469a(d).

5. Volunteers. Subrecipient organizations must use volunteers unless the state grantee determines there is a compelling reason to waive this requirement. A ''compelling reason'' may be a statutory or contractual provision concerning liability or confidentiality of counselor/victim information, which bars using volunteers for certain positions, or the inability to recruit and maintain volunteers after a sustained and aggressive effort.

6. Promote Community Efforts to Aid Crime Victims. Promote, within the community, coordinated public and private efforts to aid crime victims. Coordination may include, but is not limited to, serving on state, federal, local, or Native American task forces, commissions and/or working groups; and developing written agreements, which contribute to better and more comprehensive services to crime victims. Coordination efforts qualify an organization to receive VOCA victim assistance funds, but are not activities that can be supported with VOCA funds.

7. Help Victims Apply for Compensation Benefits. Such assistance may include identifying and notifying crime victims of the availability of compensation, assisting them with application forms and procedures, obtaining necessary documentation, and/or checking on claim status.

8. Comply with Federal Rules Regulating Grants. Subrecipients must comply with the applicable provisions of VOCA, the Program Guidelines, and the requirements of the OJP Financial Guide, effective edition, which includes maintaining appropriate programmatic and financial records that fully disclose the amount and disposition of VOCA funds received. This includes: Financial documentation for disbursements; daily time and attendance records specifying time devoted to allowable VOCA victim services; client files; the portion of the project supplied by other sources of revenue; job descriptions; contracts for services; and other records which facilitate an effective audit.

9. Maintain Civil Rights Information. Maintain statutorily required civil rights statistics on victims served by race or national origin, sex, age, and disability, within the timetable established by the state grantee; and permit reasonable access to its books, documents, papers, and records to determine whether the subrecipient is complying with applicable civil rights laws. This requirement is waived when providing a service, such as telephone counseling, where soliciting the information may be inappropriate or offensive to the crime victim.

10. Comply with State Criteria. Subrecipients must abide by any additional eligibility or service criteria as established by the state grantee including submitting statistical and programmatic information on the use and impact of VOCA funds, as requested by the grantee.

11. Services to Federal Victims. Subrecipients must provide services to victims of federal crimes on the same basis as victims of state/local crimes.

12. No Charge to Victims for VOCA-Funded Services. Subrecipients must provide services to crime victims, at no charge, through the VOCA-funded project. Any deviation from this provision requires prior approval by the state grantee. Prior to authorizing subrecipients to generate income, OVC strongly encourages administrators to carefully weigh the following considerations regarding federal funds generating income for subrecipient organizations.

a. The purpose of the VOCA victim assistance grant program is to provide services to all crime victims regardless of their ability to pay for services rendered or availability of insurance or other third-party payment resources. Crime victims suffer tremendous emotional, physical, and financial losses. It was never the intent of VOCA to exacerbate the impact of the crime by asking the victim to pay for services.

b. State grantees must ensure that they and their subrecipients have the capability to track program income in accordance with federal financial

accounting requirements. All VOCA-funded program and match income, no matter how large or small, is restricted to the same uses as the VOCA grant.

Program income can be problematic because of the required tracking systems needed to monitor VOCA-funded income and ensure that it is used only to make additional services available to crime victims. For example: VOCA often funds only a portion of a counselor's time. Accounting for VOCA program income generated by this counselor is complicated, involving careful record keeping by the counselor, the subrecipient program, and the state.

12. Client-Counselor and Research Information Confidentiality. Maintain confidentiality of client-counselor information, as required by state and federal law.

13. Confidentiality of Research Information. Except as otherwise provided by federal law, no recipient of monies under VOCA shall use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with VOCA.

Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. See Section 1407(d) of VOCA codified at 42 U.S.C. 10604.

This provision is intended, among other things, to ensure the confidentiality of information provided by crime victims to counselors working for victim services programs receiving VOCA funds. Whatever the scope of application given this provision, it is clear that there is nothing in VOCA or its legislative history to indicate that Congress intended to override or repeal, in effect, a state's existing law governing the disclosure of information, which is supportive of VOCA's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a state's existing law pertaining to the mandatory reporting of suspected child abuse. See *Pennhurst School and Hospital* v. *Halderman, et al.*, 451 U.S. 1 (1981). Furthermore, this confidentiality provision should not be interpreted to thwart the legitimate informational needs of public agencies. For example, this provision does not prohibit a domestic violence shelter from acknowledging, in response to an inquiry by a law enforcement agency conducting a missing person investigation, that the person is safe in the shelter. Similarly, this provision does not prohibit access to a victim service project by a federal or state agency seeking to determine whether federal and state funds are being utilized in accordance with funding agreements.

*C. Eligible Subrecipient Organizations*

VOCA specifies that an organization must provide services to crime victims and be operated by a public agency or nonprofit organization, or a combination of such agencies or organizations in order to be eligible to receive VOCA funding. Eligible organizations include victim services organizations whose sole mission is to provide services to crime victims. These organizations include, but are not limited to, sexual assault and rape treatment centers, domestic violence programs and shelters, child advocacy centers and child abuse treatment facilities, centers for missing children, state/local public child and adult protective services or mental health services, and other community-based victim coalitions and support organizations including those who serve survivors of homicide victims.

In addition to victim services organizations, whose sole purpose is to serve crime victims, there are many other public and nonprofit organizations that have components which offer services to crime victims. These organizations are eligible to receive VOCA funds, if the funds are used to expand or enhance the delivery of crime victims' services. These organizations include, but are not limited to, the following:

1. Criminal Justice Agencies. Such agencies as law enforcement organizations, prosecutor offices, courts, corrections departments, probation and paroling authorities are eligible to receive VOCA funds to help pay for victims' services. For example, a police department may use VOCA funds to provide crime victim services that *exceed* a law enforcement official's normal duties, such as victim crisis response units. Regular law enforcement duties such as crime scene intervention, questioning of victims and witnesses, investigation of the crime, and follow-up activities may not be paid for with VOCA funds.

2. Religiously-Affiliated Organizations. Such organizations receiving VOCA funds must ensure that services are offered to all crime victims without regard to religious affiliation and that the receipt of services is not contingent upon participation in a religious activity or event.

3. State Crime Victim Compensation Agencies. Compensation programs may receive VOCA assistance funds if they offer direct services to crime victims that extend beyond distribution of the usual information about compensation and referral to other sources of public and private assistance. Such services would include assisting victims complete their compensation application forms and gather the necessary documentation.

4. Hospitals and Emergency Medical Facilities. Such organizations must offer crisis counseling, support groups, and/or other types of victim services. In addition, state grantees may only award VOCA funds to a medical facility for the purpose of performing forensic examinations on sexual assault victims if (1) the examination meets the standards established by the state, local prosecutor's office, or state-wide sexual assault coalition; and (2) appropriate crisis counseling and/or other types of victim services are offered to the victim in conjunction with the examination.

5. Others: State and local public agencies such as mental health service organizations, state grantees, legal services agencies, and public housing authorities that have components specifically trained to serve crime victims. Since the intention of the VOCA grant program is to support and enhance the crime victim services provided by community agencies, state grantees that meet the definition of an eligible subrecipient organization may not subaward themselves more than 10 percent of their annual VOCA award.

*D. Ineligible Recipients of VOCA Funds*

Some public and nonprofit organizations that offer services to crime victims are not eligible to receive VOCA victim assistance funding. These organizations include, but are not limited to, the following:

1. Federal Agencies. This includes U.S. Attorneys Offices and local F.B.I. Offices. Receipt of VOCA funds would constitute an augmentation of the federal budget with money intended for state agencies. However, private nonprofit organizations that operate on federal land may be eligible subrecipients of VOCA victim assistance grant funds.

2. In-Patient Treatment Facilities. For example, those designed to provide treatment to individuals with drug, alcohol, and/or mental health-related conditions.

*E. Services, Activities, and Costs at the Subrecipient Level*

1. Allowable Costs for Direct Services. The following is a listing of services,

activities, and costs that are eligible for support with VOCA victim assistance grant funds within a subrecipient's organization:

a. Immediate Health and Safety. Those services which respond to the immediate emotional and physical needs (excluding medical care) of crime victims such as crisis intervention; accompaniment to hospitals for medical examinations; hotline counseling; emergency food, clothing, transportation, and shelter; and other emergency services that are intended to restore the victim's sense of dignity and self esteem. This includes services which offer an immediate measure of safety to crime victims such as boarding-up broken windows and replacing or repairing locks. Also allowable is emergency legal assistance such as filing restraining orders and obtaining emergency custody/visitation rights when such actions are directly connected to family violence cases and pertain to the health and safety of the victim.

b. Mental Health Assistance. Those services and activities that assist the primary and secondary victims of crime in understanding the dynamics of victimization and in stabilizing their lives after a victimization such as counseling, group treatment, and therapy. ''Therapy'' refers to intensive professional psychological/psychiatric treatment for individuals, couples, and family members related to counseling to provide emotional support in crises arising from the occurrence of crime. This includes the evaluation of mental health needs, as well as the actual delivery of psychotherapy.

c. Assistance with Participation in Criminal Justice Proceedings. In addition to the cost of emergency legal services noted above (in section a. ''Immediate Health and Safety''), there are other costs associated with helping victims participate in the criminal justice system that also are allowable. These services may include advocacy on behalf of crime victims; accompaniment to criminal justice offices and court; transportation to court; child care to enable a victim to attend court; notification of victims regarding trial dates, case disposition information, and parole consideration procedures; and restitution advocacy and assistance with victim impact statements. VOCA funds cannot be used to pay for non-emergency legal representation such as for divorces.

d. Forensic Examinations. For sexual assault victims, forensic exams are allowable costs only to the extent that other funding sources (such as state compensation or private insurance or public benefits) are unavailable or insufficient. State grantees should establish procedures to monitor the use of VOCA victim assistance funds to pay for forensic examinations in sexual assault cases.

e. Costs Necessary and Essential to Providing Direct Services. This includes pro-rated costs of rent, telephone service, transportation costs for victims to receive services, emergency transportation costs that enable a victim to participate in the criminal justice system, and local travel expenses for service providers.

f. Special Services. Services to assist crime victims with managing practical problems created by the victimization such as acting on behalf of the victim with other service providers, creditors, or employers; assisting the victim to recover property that is retained as evidence; assisting in filing for compensation benefits; and helping to apply for public assistance.

g. Personnel Costs. Costs that are directly related to providing direct services, such as staff salaries and fringe benefits, including malpractice insurance; the cost of advertising to recruit VOCA-funded personnel; and the cost of training paid and volunteer staff.

h. Restorative Justice. Opportunities for crime victims to meet with perpetrators, if such meetings are requested by the victim and have therapeutic value to crime victims.

State grantees that plan to fund this type of service should closely review the criteria for conducting these meetings. At a minimum, the following should be considered: (1) The safety and security of the victim; (2) the benefit or therapeutic value to the victim; (3) the procedures for ensuring that participation of the victim and offender are voluntary and that everyone understands the nature of the meeting, (4) the provision of appropriate support and accompaniment for the victim, (5) appropriate ''debriefing'' opportunities for the victim after the meeting or panel, (6) the credentials of the facilitators, and (7) the opportunity for a crime victim to withdraw from the process at any time. State grantees are encouraged to discuss proposals with OVC prior to awarding VOCA funds for this type of activity. VOCA assistance funds cannot be used for victim-offender meetings which serve to replace criminal justice proceedings.

*2. Other Allowable Costs and Services.* The services, activities, and costs listed below are not generally considered direct crime victim services, *but are* often a necessary and essential activity to ensure that quality direct services are provided. Before these costs can be supported with VOCA funds, the state grantee and subrecipient must agree that direct services to crime victims cannot be offered without support for these expenses; that the subrecipient has no other source of support for them; and that only limited amounts of VOCA funds will be used for these purposes. The following list provides examples of such items:

a. Skills Training for Staff. VOCA funds designated for training are to be used exclusively for developing the skills of direct service providers including paid staff and volunteers, so that they are better able to offer quality services to crime victims. An example of skills development is training focused on how to respond to a victim in crisis.

VOCA funds can be used for training both VOCA-funded and non-VOCA-funded service providers who work within a VOCA recipient organization, but VOCA funds cannot be used for management and administrative training for executive directors, board members, and other individuals that do not provide direct services.

b. Training Materials. VOCA funds can be used to purchase materials such as books, training manuals, and videos for direct service providers, within the VOCA-funded organization, and can support the costs of a trainer for in-service staff development. Staff from other organizations can attend in-service training activities that are held for the subrecipient's staff.

c. Training Related Travel. VOCA funds can support costs such as travel, meals, lodging, and registration fees to attend training within the state or a similar geographic area. This limitation encourages state grantees and subrecipients to first look for available training within their immediate geographical area, as travel costs will be minimal. However, when needed training is unavailable within the immediate geographical area, state grantees may authorize using VOCA funds to support training outside of the geographical area. For example, VOCA grantees may benefit by attending national conferences that offer skills building training workshops for victim assistance providers.

d. Equipment and Furniture. VOCA funds may be used to purchase furniture and equipment that provides or enhances direct services to crime victims, as demonstrated by the VOCA subrecipient.

VOCA funds cannot support the entire cost of an item that is not used exclusively for victim-related activities. However, VOCA funds can support a prorated share of such an item. In

addition, subrecipients cannot use VOCA funds to purchase equipment for another organization or individual to perform a victim-related service. Examples of allowable costs may include beepers; typewriters and word processors; video-tape cameras and players for interviewing children; two-way mirrors; and equipment and furniture for shelters, work spaces, victim waiting rooms, and children's play areas.

The costs of furniture or equipment that makes victims services more accessible to persons with disabilities, such as a TTY for the hearing impaired, are allowable.

e. Purchasing or Leasing Vehicles. Subrecipients may use VOCA funds to purchase or lease vehicles if they can demonstrate to the state VOCA administrator that such an expenditure is essential to delivering services to crime victims. The VOCA administrator must give *prior* approval for all such purchases.

f. Advanced Technologies. At times, computers may increase a subrecipient's ability to reach and serve crime victims. For example, automated victim notification systems have dramatically improved the efficiency of victim notification and enhanced victim security.

In making such expenditures, VOCA subrecipients must describe to the state how the computer equipment will enhance services to crime victims; how it will be integrated into and/or enhance the subrecipient's current system; the cost of installation; the cost of training staff to use the computer equipment; the on-going operational costs, such as maintenance agreements, supplies; and how these additional costs will be supported. Property insurance is an allowable expense as long as VOCA funds support a prorated share of the cost of the insurance payments.

State grantees that authorize equipment to be purchased with VOCA funds must establish policies and procedures on the acquisition and disbursement of the equipment, in the event the subrecipient no longer receives a VOCA grant. At a minimum, property records must be maintained with the following: A description of the property and a serial number or other identifying number; identification of title holder; the acquisition date; the cost and the percentage of VOCA funds supporting the purchase; the location, use, and condition of the property; and any disposition data, including the date of disposal and sale price. (See *OJP Financial Guide,* effective edition.)

g. Contracts for Professional Services. VOCA funds generally should not be used to support contract services. At times, however, it may be necessary for VOCA subrecipients to use a portion of the VOCA grant to contract for specialized services. Examples of these services include assistance in filing restraining orders or establishing emergency custody/visitation rights; forensic examinations on a sexual assault victim to the extent that other funding sources are unavailable or insufficient; emergency psychological or psychiatric services; or sign interpretation for the hearing impaired.

Subrecipients are prohibited from using a majority of VOCA funds for contracted services, which contain administrative, overhead, and other indirect costs included in the hourly or daily rate.

h. Operating Costs. Examples of allowable operating costs include supplies; equipment use fees, when supported by usage logs; printing, photocopying, and postage; brochures which describe available services; and books and other victim-related materials. VOCA funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics; administrative time to maintain crime victims' records; and the pro-rated share of audit costs.

i. Supervision of Direct Service Providers. State grantees may provide VOCA funds for supervision of direct service providers when they determine that such supervision is necessary and essential to providing direct services to crime victims. For example, a state grantee may determine that using VOCA funds to support a coordinator of volunteers or interns is a cost-effective way of serving more crime victims.

j. Repair and/or Replacement of Essential Items. VOCA funds may be used for repair or replacement of items that contribute to maintaining a healthy and/or safe environment for crime victims, such as a furnace in a shelter. State grantees are cautioned to scrutinize each request for expending VOCA funds for such purposes to ensure the following: (1) That the building is owned by the subrecipient organization and not rented or leased, (2) all other sources of funding have been exhausted, (3) there is no available option for providing the service in another location, (4) that the cost of the repair or replacement is reasonable considering the value of the building, and (5) the cost of the repair or replacement is pro-rated among all sources of income.

k. Public Presentations. VOCA funds may be used to support presentations that are made in schools, community centers, or other public forums, and that are designed to identify crime victims and provide or refer them to needed services. Specifically, activities and costs related to such programs including presentation materials, brochures, and newspaper notices can be supported by VOCA funds.

3. Non-Allowable Costs and Activities. The following services, activities, and costs, although not exhaustive, cannot be supported with VOCA victim assistance grant funds at the subgrantee level:

a. Lobbying and Administrative Advocacy. VOCA funds cannot support victim legislation or administrative reform, whether conducted directly or indirectly.

b. Perpetrator Rehabilitation and Counseling. Subrecipients cannot knowingly use VOCA funds to offer rehabilitative services to offenders. Likewise, VOCA funds cannot support services to incarcerated individuals, even when the service pertains to the victimization of that individual.

c. Needs Assessments, Surveys, Evaluations, Studies. VOCA funds may not be used to pay for efforts conducted by individuals, organizations, task forces, or special commissions to study and/or research particular crime victim issues.

d. Prosecution Activities. VOCA funds cannot be used to pay for activities that are directed at prosecuting an offender and/or improving the criminal justice system's effectiveness and efficiency, such as witness notification and management activities and expert testimony at a trial. In addition, victim protection costs and victim/witness expenses such as travel to testify in court and subsequent lodging and meal expenses are considered part of the criminal justice agency's responsibility and cannot be supported with VOCA funds.

e. Fundraising activities.

f. Indirect Organizational Costs. For example, the costs of liability insurance on buildings and vehicles; capital improvements; security guards and body guards; property losses and expenses; real estate purchases; mortgage payments; and construction may not be supported with VOCA funds.

g. Property Loss. Reimbursing crime victims for expenses incurred as a result of a crime such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills is not allowed.

h. Most Medical Costs. VOCA funds cannot pay for nursing home care, home health-care costs, in-patient treatment costs, hospital care, and other types of

emergency and non-emergency medical and/or dental treatment. VOCA victim assistance grant funds cannot support medical costs resulting from a victimization, except for forensic medical examinations for sexual assault victims.

i. Relocation Expenses. VOCA funds cannot support relocation expenses for crime victims such as moving expenses, security deposits on housing, ongoing rent, and mortgage payments. However, VOCA funds may be used to support staff time in locating resources to assist victims with these expenses.

j. Administrative Staff Expenses. Salaries, fees, and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless these expenses are incurred while providing direct services to crime victims.

k. Development of Protocols, Interagency Agreements, and Other Working Agreements. These activities benefit crime victims, but they are considered examples of the types of activities that subrecipients undertake as part of their role as a victim services organization, which in turn qualifies them as an eligible VOCA subrecipient.

l. Costs of Sending Individual Crime Victims to Conferences.

m. Activities Exclusively Related to Crime Prevention.

## V. Program Reporting Requirements

State grantees must adhere to all reporting requirements and timelines for submitting the required reports, as indicated below. Failure to do so may result in a hold being placed on the drawdown of the current year's funds, a hold being placed on processing the next year's grant award, or can result in the suspension or termination of a grant.

### *A. Subgrant Award Reports*

A Subgrant Award Report is required for each organization that receives VOCA funds and uses the funds for such allowable expenses including employee salaries, fringe benefits, supplies, and rent. This requirement applies to all state grantee awards including grants, contracts, or subgrants and to all subrecipient organizations.

Subgrant Award Reports are not to be completed for organizations that serve only as conduits for distributing VOCA funds or for organizations that provide limited, emergency services, on an hourly rate, to the VOCA subrecipient organizations. Services and activities that are purchased by a VOCA subrecipient are to be included on the subrecipient's Subgrant Award Report.

1. Reporting Deadline. State grantees are required to submit to OVC, within 90 days of making the subaward, Subgrant Award Report information for each subrecipient of VOCA victim assistance grant funds.

2. Electronic Submission. State grantees shall transmit their Subgrant Award Report information to OVC via the automated subgrant dial-in system. By utilizing the subgrant dial-in 1–800 number, grantees can access the system without incurring a long distance telephone charge. States and territories outside of the continental U.S. are exempt from the requirement to use the subdial system, but these grantees must complete and submit the Subgrant Award Report form, OJP 7390/2A, for each VOCA subrecipient.

3. Changes to Subgrant Award Report. If the Subgrant Award Report information changes by the end of the grant period, state grantees must inform OVC of the changes, either by revising the information via the automated subgrant subdial system, by completing and submitting to OVC a revised Subgrant Award Report form, or by making notations on the state-wide Database Report and submitting it to OVC. The total of all Subgrant Award Reports submitted by the state grantee must agree with the Final Financial Status Report (Standard Form 269A) that is submitted at the end of the grant period.

### *B. Performance Report*

1. Reporting Deadline. Each state grantee is required to submit specific end-of-grant data on the OVC-provided Performance Report, form No. OJP 7390/4, by December 31 of each year.

2. Administrative Cost Provision. For those state grantees who opt to use a portion of the VOCA victim assistance grant for administrative costs, the Performance Report will be used to describe how the funds were actually used and the impact of the 5% administrative funds on the state grantee's ability to expand, enhance, and improve services to crime victims. State grantees who choose to use a portion of their VOCA victim assistance grant for administrative costs must maintain a clear audit trail of all costs supported by administrative funds and be able to document the value of the grantee's previous commitment to administering VOCA.

## VI. Financial Requirements

As a condition of receiving a grant, state grantees and subrecipients shall adhere to the financial and administrative provisions set forth in the *OJP Financial Guide* and applicable OMB Circulars and Common Rules. The following section describes the audit requirements for state grantees and subrecipients, the completion and submission of Financial Status Reports, and actions that result in termination of advance funding.

### *A. Audit Responsibilities for Grantees and Subgrantees*

OMB Circular A–133 is being revised. Until the revisions are final, state and local government agencies that *receive* $100,000 or more in federal funds during their state fiscal year are required to submit an organization-wide financial and compliance audit report. Recipients of $25,000 to $100,000 in federal funds are required to submit a program- or organization-wide audit report as directed by the granting agency. Recipients receiving less than $25,000 in federal funds are not required to submit a program- or organization-wide financial and compliance audit report for that year. Nonprofit organizations and institutions of higher education that *expend* $300,000 or more in federal funds per year shall have an organization-wide financial and compliance audit. Grantees must submit audit reports within 13 months after their state fiscal year ends.

### *B. Audit Costs*

Under OMB Circular A–133 audit costs are generally allowable charges under federal grants. Audit costs incurred at the grantee/ (state) level are determined to be an administrative expense, and may be paid with the allowable five percent for administration.

### *C. Financial Status Report for State Grantees*

Financial Status Reports (269A) are required from all state agencies. A Financial Status Report shall be submitted to the Office of the Comptroller for each calendar quarter in which the grant is active. This Report is due even though no obligations or expenditures were incurred during the reporting period. Financial Status Reports shall be submitted to the Office of the Comptroller, by the state, within 45 days after the end of each calendar quarter. Calendar quarters end March 31, June 30, September 30, and December 31. A Final Financial Status Report is due 120 days after the end of the VOCA grant.

### *D. Termination of Advance Funding to State Grantees*

If the state grantee receiving cash advances by direct Treasury deposit demonstrates an unwillingness or

inability to establish procedures that will minimize the time elapsing between cash advances and disbursements, OJP may terminate advance funding and require the state to finance its operations with its own working capital. Payments to the state will then be made to the state by the ACH Vendor Express method to reimburse the grantee for actual cash disbursements. It is essential that the grantee organization maintain a minimum of cash on hand and that drawdowns of cash are made only when necessary for disbursements.

VII. Monitoring

*A. Office of the Comptroller*

The Office of the Comptroller conducts periodic reviews of the financial policies, procedures, and records of VOCA grantees and subrecipients. Therefore, upon request, state grantees and subrecipients must give authorized representatives the right to access and examine all records, books, papers, case files, or documents related to the grant, use of administrative funds, and all subawards.

*B. Office for Victims of Crime*

OVC conducts on-site monitoring in which each state grantee is visited a minimum of once every three years. While on site, OVC personnel will review various documents and files such as (1) financial and program manuals and procedures governing the VOCA grant program; (2) financial records, reports, and audit reports for the grantee and all VOCA subrecipients; (3) the state grantee's VOCA application kit, procedures, and guidelines for subawarding VOCA funds; and (4) all other state grantee and subrecipient records and files.

In addition, OVC will visit selected subrecipients and will review similar documents such as (1) financial records, reports, and audit reports; (2) policies and procedures governing the organization and the VOCA funds; (3) programmatic records of victims' services; and (4) timekeeping records and other supporting documentation for costs supported by VOCA funds.

VIII. Suspension and Termination of Funding

If, after notice and opportunity for a hearing, OVC finds that a state has failed to comply substantially with VOCA, the OJP Financial Guide (effective edition), the Proposed Program Guidelines, or any implementing regulation or requirement, OVC may suspend or terminate funding to the state and/or take other appropriate action. At such time, states may request a hearing on the justification for the suspension and/or termination of VOCA funds. VOCA subrecipients, within the state, may not request a hearing at the federal level. However, VOCA subrecipients who believe that the state grantee has violated a program and/or financial requirement are not precluded from bringing the alleged violation(s) to the attention of OVC.

Aileen Adams,

*Director, Office for Victims of Crime, Office for Justice Programs.*

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application Nos. D–10192, L–10193 through L–10196, et al.]**

### Proposed Exemptions ILGWU National Retirement Fund, et al. (Collectively the Plans)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

ILGWU National Retirement Fund, et al. (collectively, the Plans), Located in New York, New York

[Application Nos. D–10192, L–10193 through L–10196]

Proposed Exemption

*Section I—Transactions*

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective July 1, 1995, to—

(A) The provision of banking services (Banking Services, as defined in section IV(C)) by the Amalgamated Bank of New York (the Bank) to certain employee benefit plans (the Plans, as defined in section IV(E)), which are maintained on behalf of members of the International Ladies Garment Workers Union;

(B) The purchase by the Plans of certificates of deposit (CDs) issued by the Bank; and

(C) The deposit of Plans' assets in money market or other deposit accounts established by the Bank; provided that the applicable conditions of Section II and Section III are met:

*Section II—Conditions*

(A) The terms under which the Banking Services are provided by the Bank to the Plans, and those under which the Plans purchase CDs from the Bank or maintain deposit accounts with the Bank, are at least as favorable to the Plans as those which the Plans could obtain in arm's-length transactions with unrelated parties.

(B) The interests of each of the Plans with respect to the Bank's provision of Banking Services to the Plans, the purchase of CDs from the Bank by any of the Plans, and the deposit of Plan assets in deposit accounts established by the Bank, are represented by an Independent Fiduciary (as defined in section IV(D)).

(C) With respect to each Plan, the representation of the Plan's interests by the Independent Fiduciary is authorized, and confirmed at least annually, by the Authorizing Plan Fiduciary (as defined below in section IV(A));

(D) With respect to the purchase by any of the Plans of certificates of deposit (CDs) issued by the Bank or the deposit of Plan assets in a money market account or other deposit account established at the Bank: (1) Such transaction complies with the conditions of section 408(b)(4) of the Act; (2) Any CD offered to the Plans by the Bank is also offered by the Bank in the ordinary course of its business with unrelated customers; and (3) Each CD purchased from the Bank by a Plan pays the maximum rate of interest for CDs of the same size and maturity being offered by the Bank to unrelated customers at the time of the transaction;

(E) The compensation received by the Bank for the provision of Banking Services to the Plan is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act.

(F) Following the merger of the International Ladies Garment Workers Union with UNITE, the Independent Fiduciary made an initial written determination that (1) the Bank's provision of Banking Services to the Plans, (2) the deposit of Plan assets in depository accounts maintained by the Bank, and (3) the purchase by the Plans of CDs from the Bank, are in the best interests and protective of the participants and beneficiaries of each of the Plans.

(G) On a periodic basis, not less frequently than quarterly, the Bank provides the Independent Fiduciary with a written report (the Periodic Report) which includes the following items with respect to the period since the previous Periodic Report: (1) A listing of Banking Services provided to, all outstanding CDs purchased by, and deposit accounts maintained for each Plan; (2) a listing of all fees paid by the Plans to the Bank for the Banking Services, (3) the performance of the Bank with respect to all investment management services, (4) a description of any changes in the Banking Services, (5) an explanation of any problems experienced by the Bank in providing the Banking Services, (6) a description of any material adverse events affecting the Bank, and (7) any additional information requested by the Independent Fiduciary in the discharge of its obligations under this exemption.

(H) On a periodic basis, not less frequently than annually, the Independent Fiduciary reviews the Banking Services provided to each Plan by the Bank, the compensation received by the Bank for such services, any purchases by the Plan of CDs from the Bank, and any deposits of assets in deposit accounts maintained by the Bank, and makes the following written determinations:

(1) The services, CDs and depository accounts are necessary or appropriate for the establishment or operation of the Plan;

(2) The Bank is a solvent financial institution and has the capability to perform the services;

(3) The fees charged by the Bank are reasonable and appropriate;

(4) The services, the depository accounts, and the CDs are offered to the Plan on the same terms under which the Bank offers the services to unrelated Bank customers in the ordinary course of business;

(5) Where the Banking Services include an investment management service, that the rate of return is not less favorable to the Plan than the rates on comparable investments involving unrelated parties; and

(6) The continuation of the Bank's provision of Banking Services to the Plan for compensation is in the best interests and protective of the participants and beneficiaries of the Plan.

(I) Copies of the Bank's periodic reports to the Independent Fiduciary are furnished to the Authorizing Plan Fiduciaries on a periodic basis, not less frequently than annually and not later than 90 days after the period to which they apply.

(J) The Independent Fiduciary is authorized to continue, amend, or terminate, without any penalty to any Plan (other than the payment of penalties required under federal or state banking regulations upon premature redemption of a CD), any arrangement involving: (1) The provision of Banking Services by the Bank to any of the Plans, (2) the deposit of Plan assets in a deposit account maintained by the Bank, or (3) any purchases by a Plan of CDs from the Bank;

(K) The Authorizing Plan Fiduciary may terminate, without penalty to the Plan (other than the payment of penalties required under federal or state banking regulations upon premature redemption of a CD), the Plan's participation in any arrangement involving: (1) The representation of the Plan's interests by the Independent Fiduciary, (2) the provision of Banking Services by the Bank to the Plan, (3) the deposit of Plan assets in a deposit account maintained by the Bank, or (4) the purchase by the Plan of CDs from the Bank.

*Section III—Recordkeeping*

(A) For a period of six years, the Bank and the Independent Fiduciary will maintain or cause to be maintained all written reports and other memoranda evidencing analyses and determinations made in satisfaction of conditions of this exemption, except that: (a) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Independent Fiduciary and the Bank the records are lost or destroyed before the end of the six-year period; and (b) no party in interest other than the Bank and

the Independent Fiduciary shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (2) below;

(B)(1) Except as provided in section (2) of this paragraph (B) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (A) of this section III shall be unconditionally available at their customary location during normal business hours for inspection by: (a) Any duly authorized employee or representative of the U.S. Department of Labor or the Internal Revenue Service, (b) any employer participating in the Plans or any duly authorized employee or representative of such employer, and (c) any participant or beneficiary of the Plans or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described in subsections (b) and (c) of subsection (1) above shall be authorized to examine trade secrets of the Independent Fiduciary or the Bank, or any of their affiliates, or any commercial, financial, or other information that is privileged or confidential.

*Section IV—Definitions*

(A) ''Authorizing Plan Fiduciary'' means, with respect to each Plan, the board of trustees of the Plan or other appropriate plan fiduciary with discretionary authority to make decisions with respect to the investment of Plan assets;

(B) ''Bank'' means the Amalgamated Bank of New York;

(C) ''Banking Services'' means custodial, safekeeping, checking account, trustee services, and investment management services involving fixed income securities (either directly or through a collective investment fund maintained by the Bank).

(D) ''Independent Fiduciary'' means a person, within the meaning of section 3(9) of the Act, who (1) Is not an affiliate of the Union of Needletrades, Industrial & Textile Employees (UNITE) and any successor organization thereto by merger, consolidation or otherwise, (2) is not an officer, director, employee or partner of UNITE, (3) is not an entity in which UNITE has an ownership interest, (4) has no relationship with the Bank other than as Independent Fiduciary under this exemption, and (5) has acknowledged in writing that it is acting as a fiduciary under the Act. No person may serve as an Independent Fiduciary for the Plans for any fiscal year in which the gross income (other than fixed, non-discretionary retirement income) received by such person (or any partnership or corporation of which such person is an officer, director, or ten percent or more partner or shareholder) from UNITE and the Plans for that fiscal year exceed five percent of such person's annual gross income from all sources for the prior fiscal year. An affiliate of a person is any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person. The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual. Initially, the Independent Fiduciary is U.S. Trust Company of California, N.A.

(E) ''Plans'' means any of the following employee benefit plans, and their successors by reason of merger, spin-off or otherwise:

International Ladies Garment Workers Union Nation Retirement Fund;
International Ladies Garment Workers Union Death Benefit Fund;
Health Fund of New York Coat, Suit, Dress, Rainwear & Allied Workers Union, ILGWU;
Health & Vacation Fund, Amalgamated Ladies Garment Cutters Union, Local 10;
ILGWU Eastern States Health & Welfare Fund;
ILGWU Office, Clerical & Misc. Employee Retirement Fund;
ILGWU Retirement Fund, Local 102;
Union Health Center Staff Retirement Fund;
Unity House 134 HREBIU Plan Fund;
Puerto Rican Health & Welfare Fund;
Health & Welfare Fund of Local 99, ILGWU;
Local 99 Exquisite Form Industries, Inc. Severance Fund;
Local 99 K-Mart Severance Fund;
Local 99 Kenwin Severance Fund;
Local 99 Lechters Severance Fund;
Local 99 Eleanor Shops Severance Fund;
Local 99 Monette Severance Fund;
Local 99 Moray, Inc. Severance Fund;
Local 99 Petri Stores, Inc. Severance Fund;
Local 99 Netco, Inc. Severance Fund;
Local 99 Misty Valley, Inc. Severance Fund; and
Local 99 Norstan Apparel Shops, Inc. Severance Fund

(F) ''UNITE'' means the Union of Needletrades, Industrial & Textile Employees and any successor organization thereto by merger, consolidation or otherwise.

**EFFECTIVE DATE:** This exemption, if granted, shall be effective as of July 1, 1995.

Summary of Facts and Representations

1. The Plans are pension and welfare benefit plans established pursuant to collective bargaining agreements to provide benefits to active members, retired members and staff of the International Ladies Garment Workers Union (ILGWU) and its local unions. At various times prior to July 1, 1995, each of the Plans had retained and commenced to utilize the banking services of the Amalgamated Bank of New York (the Bank), a New York state-chartered commercial bank located in New York, New York. The services for which the Plans contracted with the Bank have included custodial, safekeeping, checking account, trustee, and fixed-income investment management services. The Plans have also purchased certificates of deposit issued by the Bank and utilized the Bank's money market and other deposit accounts. The Plans have used varying combinations of the services offered by the Bank. For example, as of July 1, 1995, six of the Plans were using the Banks's investment management services of a fixed-income nature; six Plans were using the Bank's custodial services, some in conjunction with the investment management services; seven Plans were using the Bank's safekeeping services; and one Plan held certificates of deposit issued by the Bank.

When these service-provision relationships between the Bank and the Plans were established, prior to July 1, 1995, all of the common stock of the Bank was held by or on behalf of the General Office of the Amalgamated Clothing and Textile Workers Union (ACTWU), local unions and joint boards of ACTWU, and individuals related to ACTWU. Prior to July 1, 1995, ACTWU and ILGWU were not related. Thus, the Bank represents that prior to July 1, 1995, the Bank was a party in interest with respect to the Plans solely by reason of the provision of services to the Plans and not by reason of any ownership of interests in the Bank by ILGWU or the Plans.

2. Effective July 1, 1995 (the Consolidation Date), ACTWU and the ILGWU merged and formed a consolidated organization, the Union of Needletrades, Industrial and Textile Employees (UNITE). Under the agreement governing the merger (the Agreement), UNITE is deemed to be a consolidation and continuation of ILGWU and ACTWU and their respective affiliates. Neither ACTWU nor ILGWU is deemed to have been

dissolved or terminated by the consolidation, and each is treated under the Agreement as a ''constituent member'' of UNITE. As part of the consolidation, new Bank stock was issued to UNITE and Bank stock previously held in the name of ACTWU was transferred to and registered in the name of UNITE. Pursuant to the Agreement, the president of UNITE appointed ten new members of the Bank's board of directors to reflect the participation of ILGWU in the ownership of the Bank, and all of the newly-appointed Bank directors are trustees of one or more of the Plans. The Bank represents that as a result of the consolidation pursuant to the Agreement, the Bank became more than fifty percent (50%) owned by an employee organization whose members are covered by the Plans, and therefore the Bank became a party in interest with respect to the Plans by reason of the ownership of the Bank by UNITE.

3. The Bank is requesting an exemption to permit the continuation, after the Consolidation Date, of the Bank's provision to the Plans of the banking services which had been provided to the Plans prior to the Consolidation Date, under the terms and conditions described herein. The services which the Bank will be authorized to continue to provide to the Plans are defined in the exemption as (1) services identified in the exemption as Banking Services, consisting of custodial, safekeeping, checking account, trustee services, and investment management services involving fixed income securities (either directly or through a collective investment fund maintained by the Bank); (2) the purchase by the Plans of certificates of deposit (CDs) issued by the Bank; and (3) the deposit of Plans' assets in money market or other deposit accounts established by the Plan. Hereafter, references to Banking Services will include all three types of services provided to the Plans by the Bank.

4. Under the exemption, with respect to the proposed continuation of the Bank's provision of Banking Services to the Plan, the interests of the Plans and their participants and beneficiaries must be represented by a fiduciary which is independent of and unrelated to the Bank (the Independent Fiduciary). The exemption defines the Independent Fiduciary as a person (within the meaning of section 3(9) of the Act) who has acknowledged in writing its fiduciary capacity under the Act and who is unrelated to the Bank and UNITE other than as Independent Fiduciary under this exemption. Under the terms of the exemption, the Independent Fiduciary is required to conduct an initial evaluation of the Banking Services to determine whether their continued provision to the Plans after the Consolidation Date is in the best interests and protective of the participants and beneficiaries of the Plans, and thereafter to monitor and oversee the relationships between the Plans and the Bank, representing the Plans' interests therein and conducting ongoing periodic evaluations and determinations as to whether the Bank's provision of Banking Services to the Plans continues to be in the best interests and protective of the Plans. The Independent Fiduciary's authority includes the ability to continue, amend or terminate, without penalty to a Plan (other than a penalty required for early redemption of a CD) any arrangement under which the Bank provides the Banking Services to any of the Plans. On a periodic basis no less frequent than annually, the Independent Fiduciary is required to review the Banking Services provided to each Plan by the Bank, the compensation received by the Bank for such services, any purchases by the Plan of certificates of deposit (CDs) from the Bank, and any deposits of assets in deposit accounts maintained by the Bank, and to make a number of written determinations, more fully described in section II(H) of the proposed exemption, constituting an analysis of whether the Bank's provision of Banking Services to the Plans continues to be in the best interests and protective of the participants and beneficiaries of the Plans. To enable the Independent Fiduciary to fulfill its obligations under the exemption, the Bank is required to provide information (listed in section II(G) of the proposed exemption) in writing to the Independent Fiduciary no less frequently than quarterly, relating to identification and description of the Banking Services and the circumstances under which they are rendered. The exemption requires that the compensation received by the Bank for the provision of services to the Plans is not in excess of reasonable compensation within the meaning of section 408(b)(2) of the Act.

5. With respect to each Plan, the exemption requires that the representation of the Plan's interests by the Independent Fiduciary regarding the Bank's provision of Banking Services to the Plan is authorized and confirmed at least annually by the Plan's board of trustees or other appropriate Plan fiduciary with authority to make decisions with respect to the investment of Plan assets (the Authorizing Plan Fiduciary). The Authorizing Plan Fiduciary of each Plan must be furnished copies of the Bank reports to the Independent Fiduciary no less frequently than annually and no later than 90 days after the period to which they apply. The exemption provides that the Authorizing Plan Fiduciary may terminate, without penalty to the Plan (other than a penalty required for early redemption of a CD), the Plan's participation in any arrangement involving the representation of the Plan's interests by the Independent Fiduciary or the provision of Banking Services by the Bank.

6. The exemption requires the Bank and the Independent Fiduciary to maintain all written reports and other memoranda evidencing analyses and determinations made in satisfaction of the conditions of the exemption. The Plans which are covered by the exemption are identified in section IV(E) of the exemption. The effective date of the exemption will be July 1, 1995, the Consolidation Date.

7. The U.S. Trust Company of California, N.A. (U.S. Trust) was appointed by the Plans (the Appointment) effective July 28, 1995 to serve in the capacity of Independent Fiduciary on behalf of the Plans with respect to the Bank's provision of the Banking Services to the Plans in accordance with the exemption, pursuant to an agreement signed and formalized on September 21, 1995 between the Plans, the Bank and U.S. Trust. With assets under management totalling approximately $53 billion, U.S. Trust represents that it has extensive trust and management capabilities, including discretionary asset management, asset allocation and diversification, investment advice, securities trading and independent fiduciary assignments under the Act. U.S. Trust represents that immediately upon the Appointment, it undertook a review and assessment of the Banking Services and made a preliminary determination that the Banking Services were appropriate and adequate to satisfy the Plans' banking needs, until a more thorough review and assessment could be completed. U.S. Trust represents that it has completed this thorough review and assessment with the professional assistance of the consulting firm of Towers Perrin (Towers Perrin). Towers Perrin, an international firm of consultants and consulting actuaries, represents that it is a registered investment advisor under the Investment Advisors Act of 1940, providing a broad range of services for investment management evaluation and performance measurement. U.S. Trust

represents that in its review and assessment of the Bank and the Banking Services provided to the Plans, U.S. Trust gathered information from various sources, including various operations of the Bank, the Bank's legal counsel, the Plans, and Towers Perrin. U.S. Trust represents that its representatives and those of Towers Perrin met with various officers of the Bank including the Bank's Chief Executive Officer and Chief Investment Officer. U.S. Trust represents that it also utilized a written report by Towers Perrin, prepared at the request of U.S. Trust, specifically analyzing the investment management services which the Bank has provided the Plans.

8. U.S. Trust has made various findings and determinations with respect to the Bank and the provision of Banking Services to the Plans which are summarized as follows:

*Financial condition of the Bank:* U.S. Trust represents that it examined the Bank as a whole, from a financial point view. U.S. Trust states that it found the Bank's assets to be liquid and secure, with 82 percent of assets invested in AAA-rated securities and only 7.4 percent invested in loans. U.S. Trust represents that the duration positioning of the Bank's assets and liabilities is managed such that, when considered in conjunction with the liquidity of the Bank's assets, interest rate changes will have a minimal effect on the Bank's income. U.S. Trust concludes that the Bank is operated very conservatively and is very well capitalized and solvent.

*Custodial and safekeeping services:* U.S. Trust represents that it determined that the Bank possesses adequate capability to perform all custodial and safekeeping services needed by the Plans, utilizing both the Bank's own personnel and facilities as well as the contract services of qualified third parties for certain data processing and sub-custodial services. U.S. Trust determined that these services as provided to the Plans are offered by the Bank to the public in the ordinary course of business. U.S. Trust states that the fee schedules of the Bank for these services are reasonable, based on industry standards, and that the actual fees charged the Plans for custodial services are lower than the scheduled fees. U.S. Trust concludes that the Bank's provision of custodial and safekeeping services to the Plan is reasonable and appropriate.

*Certificates of deposit (CDs), money market accounts and checking accounts:* U.S. Trust determined that the Bank has the capability to offer CDs and money market and other deposit account services as needed by any of the Plans, and that the Bank offers these same services to the general public in the ordinary course of its business. U.S. Trust states that the fees are reasonable, because no fees are charged with respect to CDs and money market accounts and the Bank customarily does not charge the Plans fees for checking accounts. U.S. Trust represents that at the time of its review, the rates of return on CDs, as published in the Wall Street Journal, were lower than the rates paid by the Bank on CDs with the same or shorter maturities. U.S. Trust states that the rate paid by the Bank on its money market account also appears to be reasonable, based on U.S. Trust's experience and investigation, although there are no indices or published rates to use in comparison. Considering all the information obtained, U.S. Trust concludes that the Plans' utilization of the Bank for CDs and money market and other deposit account services is reasonable and appropriate.

*Investment Management Services:* U.S. Trust represents that it reviewed and evaluated the fixed-income investment products offered by the Bank to the Plans, which are of three categories:

(1) A short-term bond fund (the Short-Term Product) with an average duration of 1.7 years in 1995, investing primarily in U.S. Treasury and government agency securities, in which four Plans have invested a total of $111.6 million;

(2) A bond fund with an average duration of 3.4 years in 1995 (the Intermediate-Duration Product) investing primarily in U.S. Treasury and government agency securities and corporate bonds, in which one Plan has invested a total of $2.5 million; and

(3) A bond fund designed for longer term investors (the Core Duration Product) with an average duration of 4.6 years in 1995, investing primarily in U.S. Treasury and government securities, corporate bonds, and mortgage-backed securities, in which one Plan has invested a total of $24.1 million.

U.S. Trust represents that in its review and evaluation of these investment products, it utilized an extensive report prepared by Towers Perrin regarding the products, and attended due diligence meetings with various officers of the Bank. U.S. Trust states that it analyzed the Bank's investment process, personnel, performance results, fees, product and personnel growth, representative clients, historical portfolio characteristics and a current portfolio contents summary. U.S. Trust represents that in the course of its review it determined that the Bank maintains the capability to provide these investment management services competently, that the services are offered by the Bank to the public in the ordinary course of business, and that the fees for the services are reasonable based on industry norms taking into account the experience and reputation of the Bank. U.S. Trust states that it determined that additional costs to the Plans, approximating $80,000, would likely result from a decision to replace the Bank as the provider of these investment management services. With respect to each of these three categories of investment products, U.S. Trust made specific determinations regarding the rates of return provided and arrived at specific conclusions as to whether the investment products were appropriate for the Plans, summarized as follows:

(1) The Short-Duration Product has consistently outperformed its benchmark index, the Merrill Lynch 1–3 Year Treasury Index, earning 8.4 percent per year over the past seven years on an annualized basis, while being conservatively managed and maintaining a high quality of investment assets. U.S. Trust notes that the Bank has represented that the investment strategy of this product will remain unchanged. U.S. Trust has determined that the investment of assets of the Plans in the Short-Duration Product is reasonable and appropriate.

(2) The Intermediate-Duration Product's cumulative performance over the past seven years is very close to its benchmark, the Lehman Intermediate Government/Corporate Index, and U.S. Trust determined that this product is capable of generating returns above its benchmark. U.S. Trust notes that the investment parameters of this product have recently changed to include investments in corporate bonds and that it has since demonstrated an ability to enhance returns. Because this product has been managed under its current guidelines for a relatively short period of time, U.S. Trust has concluded that the selection of this product by certain of the Plans is reasonable and appropriate for one more year, after which time another year's investment results will be available for consideration and U.S. Trust will undertake a reassessment of whether this product remains reasonable and appropriate for investments by the Plans.

(3) U.S. Trust found that the Core Duration Product outperformed its benchmark, the Lehman Aggregate Index, for 1995 and that its investment parameters were recently changed to expand duration and maturity restrictions and include corporate bonds

and asset-backed securities among its investment assets. U.S. Trust concludes that the selection of this product by certain of the Plans is reasonable and appropriate for one more year, after which time another year's investment results will be available for consideration and U.S. Trust will undertake a reassessment of whether this product remains reasonable and appropriate for investments by the Plans.

*Conclusion:* As a conclusion to its review and analysis, U.S. Trust states that in view of the information discussed above and U.S. Trust's judgment with respect thereto, subject to the limitations discussed regarding the Intermediate and Core Duration Products, U.S. Trust believes it is in the best interests of the Plans to use the investment management and other banking services provided by the Bank.

9. In summary, the applicant represents that the proposed exemption satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The interests of the Plans with respect to the Bank and its provision of services to the Plans are represented by an Independent Fiduciary, U.S. Trust; (b) The representation of each Plan's interests by the Independent Fiduciary with respect to the Bank and its provision of services is authorized annually by the Plan's Authorizing Plan Fiduciary; (c) U.S. Trust has reviewed and evaluated the entire range of services provided by the Bank to the Plans and has determined that it is in the best interests of the Plans to utilize such services; (d) The Independent Fiduciary will oversee and monitor the Bank's provision of services to the Plans and will make written determinations at least annually regarding the continuation of such provision of services; (e) At least quarterly, the Bank is required to submit a Periodic Report to the Independent Fiduciary which relates relevant details of the services provided by the Bank to any of the Plans; (f) The Authorizing Plan Fiduciary will be provided copies of the Bank's Periodic Reports to the Independent Fiduciary; (g) With respect to each Plan, the Authorizing Plan Fiduciary is authorized to terminate the representation of the Plan's interests by the Independent Fiduciary or the provision of any services to the Plan by the Bank; and (h) With respect to each Plan, the Independent Fiduciary is authorized to continue, amend or terminate the Bank's provision of any services to the Plan by the Bank.

**FOR FURTHER INFORMATION CONTACT:** Ron Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

## Hawaiian Airlines, Inc. Pilots' 401(k) Plan (the Pilots' Plan), Hawaiian Airlines, Inc. 401(k) Plan for Flight Attendants (the Attendants' Plan), and Hawaiian Airlines, Inc. 401(k) Savings Plan (the Savings Plan; collectively the Plans) Located in Honolulu, Hawaii

[Application Nos. D–10380, D–10381, and D–10382]

### Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the past acquisition by the Plans of certain transferable stock rights (the Rights) pursuant to a stock rights offering (the Offering) to the Plans by Hawaiian Airlines, Inc. (the Employer), the sponsor of the Plans; (2) the past holding of the Rights by the Plans during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plans provided the following conditions are satisfied:

(A) The acquisitions and holding of the Rights by the Plans occurred in connection with the Offering made available to all shareholders of the common stock of the Employer; (B) The acquisition and holding of Rights by the Plans resulted from an independent act of the Employer as a corporate entity and all holders of the common stock of the Employer, including the Plans, were treated in the same manner with respect to the Offering; and (C) All decisions regarding the holding and disposition of the Rights by the Plans were made in accordance with provisions of the Plans for individually-directed investment of participant accounts by the individual participants of the Plans whose accounts in the Plans received Rights in connection with the Offering, including all determinations regarding the exercise or sale of the Rights received through the Offering, and if no timely instructions concerning the Rights were given by participants of the Plans, the Rights were sold.

**EFFECTIVE DATE:** This exemption if granted, will be effective as of August 7, 1996.

### Summary of Facts and Representations

1. The Employer, a Hawaii corporation since 1929, is located in Honolulu, Hawaii. It is primarily in the scheduled transportation of passengers, cargo, and mail over a route system that services the six major islands of Hawaii and Las Vegas and four cities on the west coast: Los Angeles, San Francisco, Seattle, and Portland. In addition, the Employer provides the only direct service from Hawaii to PagoPago, American Samoa and Papeete, Tahiti. Also, the Employer provides charter service from Honolulu to Las Vegas. The Employer operates a fleet of thirteen DC–9 aircraft and eight DC–10 aircraft.

The common stock of the Employer is listed and traded on both the American Stock Exchange and the Pacific Stock Exchange.

2. The Plans are defined contribution plans intended to satisfy the requirements of section 401(a) of the Code. The Pilots' Plan and the Attendants' Plan are collectively bargained profit sharing plans with cash or deferred arrangements under section 401(k) of the Code.

Both the Air Line Pilots Association, International (the ALPA) and the Association of Flight Attendants (the AFA) separately bargain with the Employer for their own members over the terms of the Pilots' Plan and the Attendants' Plan, respectively. The Employer appoints two members to each Retirement Board for both the Pilots' Plan and the Attendants' Plan, respectively, and the ALPA and the AFA each appoints two members to the respective Plans of which their members are participants. The four members of each of the Retirement Boards select investment options for their respective participants, and resolves disputes concerning the application, interpretation, or administration of each of the Plans. As of August 2, 1996, the Pilots' Plan had total assets of $8,960,644 and 333 participants and the Attendants' Plan had total assets of $26,305,738 and 602 participants. The Savings Plan covers mostly non-collectively and some collectively bargained employees, represented by the International Association of Machinists, and is a profit sharing plan with a cash or deferred arrangement under section 401(k) of the Code. Since September 1, 1993, the Savings Plan requires Employer contributions and provides that contributions from participants are optional. The Employer solely appoints the three members to the Retirement Board for the Savings Plan. The Retirement Board for the Savings Plan selects investment options for

participants and resolves disputes concerning the application, interpretation, or administration of the Savings Plan. As of August 2, 1996, the Savings Plan had total assets of $11,171,947 and 1,408 participants.

Pursuant to a trust agreement with the Employer, Vanguard Fiduciary Trust Company (Vanguard), a Pennsylvania corporation located in Malvern, Pennsylvania, is the trustee for the Plans. Vanguard acts for the Plans upon investment instructions from participants of the Plans and upon directions from the respective Retirement Boards of the Plans. In addition, Vanguard provides the Plans with different investment options or combinations thereof that have been selected by the different Retirement Boards for the participants of the Plans to direct investments for their respective accounts in the Plans. [1]

3. On December 8, 1995, in order to increase its working capital, the Employer, with approval of its shareholders, entered into an investment agreement with Airline Investors Partnership, L.P. (AIP), whereby the Employer during January 1996 issued and sold to AIP 18,181,818 shares of its common stock at $1.10 per share for a total purchase price of $20 million. At the same time, the Employer also issued and sold four shares of its Class B Special Preferred Stock to AIP for a total purchase price of $4.40.

AIP, formed in November 1995 to invest in the Employer, is a Delaware limited partnership whose general partner is AIP General Partner, Inc., a Delaware corporation with its principal office in New York City. By its investment in four shares of the Class B Special Preferred Stock of the Employer, AIP has the right to nominate six of the eleven individuals elected to the board of directors of the Employer. Currently the president and a vice president of the general partner of AIP and four other nominees of AIP have six of the seats on the board of directors of the Employer.

The price AIP agreed to pay for its common stock investment in the Employer in January 1996 was substantially discounted from the common stock's closing market price of 2 11⁄16 on December 8, 1995. In recognition of the dilutive effect of the AIP acquisition, the investment agreement with AIP contained a provision for an offering of subscription rights to all shareholders of the Employer, including the Plans but excluding AIP, to purchase an aggregate of up to 8,151,000 shares of common stock during the 30-day offering. The applicant represents that the objective of the Offering was to permit non-AIP shareholders an opportunity to purchase the stock of the Employer at a discount price. Also, it was represented by the applicant that an additional motivation for the Offering was to raise additional working capital above the investment by AIP in order to meet the goal of the Employer of improving its financial liquidity.[2]

4. Pursuant to the terms of the Offering, each shareholder, excluding AIP, received one Right for each share of common stock held as of the record date at the close of business on August 7, 1996 (the Record Date).[3] As of the Record Date, the Plans held a total of 1,488,703 shares and received the same number of Rights pursuant to the Offering. Each Right entitled a holder to purchase one share of the common stock issued by the Employer for the exercise price of $3.25. The exercise price was determined by the Employer after consultation with its independent financial advisor prior to the Offering. The Rights were traded on the American and Pacific Stock Exchanges until the expiration date of the Offering. The Rights held by the Plans required participants to communicate their directions to Vanguard, the trustee for the Plans, by September 5, 1996, in order that the directions from the participants of the Plans could be properly and correctly processed by Vanguard. The applicant represents that prior to the effective date of the Offering, the trustee, Vanguard, sent each participant in the Plans written information regarding the Offering and the Rights. During the effective period of the Offering Vanguard provided each participant in the Plans the opportunity to independently decide whether to exercise the Rights or to sell them. Also, the participants were informed that if Vanguard did not receive timely instructions, or received no instructions, Vanguard would sell the Rights. The applicant represents that all Rights received by the Plans were either exercised or sold.

Approximately 153,929 Rights issued to the Plans were exercised for the total sum of $500,269, and the Plans netted approximately $118,345.52 from the sale of the remaining Rights. As of the day preceding the Record Date, the price of the common stock of the Employer at the closing of the American Stock Exchange was $3.75.

5. The applicant represents that the terms of the offering can be verified by the documents filed with the Securities and Exchange Commission and with the American and Pacific Stock Exchanges. Also, prices of the common stock and the Rights can be verified by examining the trading activity as published in the various newspapers. In addition, the applicant represents that participants and beneficiaries of the Plans had the opportunity to exercise independent decision-making authority with respect to the Rights in their accounts. Furthermore, the applicant represents that the Plans were given the Rights at no cost to the Plans, thus enabling the participants to enhance their respective account balances that were holding Employer common stock by either exercising the Rights at prices below the market price or by selling the Rights.

The applicant represents that the Employer has borne all costs associated with the Rights Offering to the Plans and the costs associated with the exemption application.

6. In summary the applicants represent that the transactions satisfied the statutory criteria of section 408(a) of the Act for the following reasons: (a) the acquisition of the Rights by the Plans resulted from an independent act by the Employer as a corporate entity and all holders of the common stock of the Employer were treated in a like manner, including the Plans; (b) all decisions with respect to the rights were controlled by involved participants in accordance with provisions of the Plans for individually-directed investments of such accounts; (c) the Rights and the common stock of the Employer were both traded on the American and Pacific Stock Exchanges with current price information readily ascertainable as were the terms of the offering from the public documents distributed to the holders of the common stock and filed with the Securities and Exchange Commission and the Exchanges; (d)

[1] The Department expresses no opinion as to whether or not the provisions of the Plans satisfy the requirements of section 404(c) of the Act and regulations thereunder with respect to the various investment options offered the participants of the Plans.

[2] Rights were distributed in the Offering to two different groups: (i) all shareholders as of August 7, 1996, including the Plans but excluding AIP, and (ii) all employees of the Employer, other than members of senior management, who were employed at any time during 1995 and on the record date, August 7, 1996, without regard to their indirect shareholder status as participants in the Plans. Also, participants of the 1994 Stock Option Plan of the Employer were granted options to purchase common stock from the Employer for $3.25 per share. The Employer also entered into stock purchase agreements with certain institutional investors, high net worth individuals, and non-employee directors which the investors agreed to purchase common stock from the Employer at $3.25 per share. The applicant represents that a total of 12,085,000 shares of common stock were issued during the Rights Offering to the above persons.

[3] The Department notes that the Rights do not constitute ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act.

there were no expenses incurred by the Plans or its participants or beneficiaries from the Offering and the resulting transactions; and (e) if no instructions were received by the Plans trustee, the Rights were sold.

**FOR FURTHER INFORMATION CONTACT:** Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 12th day of February, 1997.

Ivan Strasfeld,

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 97–3837 Filed 2–14–97; 8:45 am]

**BILLING CODE 4510–29–P**

**[Prohibited Transaction Exemption 97–12; Exemption Application No. D–10014, et al.]**

## Grant of Individual Exemptions; Wells Fargo Bank, N.A. (Wells Fargo), et al.

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Wells Fargo Bank, N.A. (Wells Fargo) Located in San Francisco, CA

[Prohibited Transaction Exemption (PTE) 97–12; Exemption Application No. D–10014]

Exemption

*Section I. Covered Transactions*

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective October 1, 1995, to the purchase or redemption of shares by an employee benefit plan (the Plan), in certain mutual funds that are either affiliated with Wells Fargo (the Affiliated Funds) or are unaffiliated with Wells Fargo (the Third Party Funds)*, in connection with the participation by the Plan in the Wells Fargo Portfolio Advisor Program (the Portfolio Advisor Program).

In addition, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (E) and (F) of the Code, shall not apply, effective October 1, 1995, to the provision, by Wells Fargo, of asset allocation services to an independent fiduciary of a participating Plan (the Independent Fiduciary) or to a participant (the Directing Participant) of a Plan covered under the provisions of section 404(c) of the Act (the Section 404(c) Plan) which may result in the selection of portfolios by the Independent Fiduciary or the Directing Participant in the Portfolio Advisor Program for the investment of Plan assets.

This exemption is subject to the conditions set forth below in Section II.

*Section II. General Conditions*

(a) The participation by each Plan in the Portfolio Advisor Program is

* The Affiliated Funds and the Third Party Funds are collectively referred to herein as the Funds.

approved by an Independent Fiduciary or Directing Participant, in the case of a Section 404(c) Plan, and, with the exception of Wells Fargo master and prototype plans, no Plan investing therein is sponsored or maintained by Wells Fargo and/or its affiliates with respect to their own employees.

(b) As to each Plan, the total fees that are paid to Wells Fargo and its affiliates constitute no more than reasonable compensation for the services provided.

(c) With the exception of distribution-related fees pursuant to Rule 12b–1 (the 12b–1 Fees) of the Investment Company Act of 1940 which are offset, no Plan pays a fee or commission by reason of the acquisition or redemption of shares in the Funds.

(d) The terms of each purchase or redemption of shares in the Funds remain at least as favorable to an investing Plan as those obtainable in an arm's length transaction with an unrelated party.

(e) Wells Fargo provides written documentation to each Plan's Independent Fiduciary or Directing Participant of its recommendations or evaluations with respect to the Affiliated Funds or the Third Party Funds based upon objective criteria.

(f) Any recommendation or evaluation made by Wells Fargo to an Independent Fiduciary or Directing Participant is implemented only at the express direction of such Independent Fiduciary or Directing Participant.

(g) The quarterly fee that is paid by a Plan to Wells Fargo and its affiliates for asset allocation and related services (the Outside Fee) rendered to such Plan under the Portfolio Advisor Program is offset by all gross investment management fees (the Advisory Fees) and administrative fees (the Administrative Fees) received from the Affiliated Funds by Wells Fargo, its affiliates, its former affiliates and unrelated parties, including all 12b–1 Fees and Administrative Fees that are paid by the Affiliated Funds to Stephens Inc. and all 12b–1 Fees that Wells Fargo receives from the Third Party Funds, such that the sum of the offset and the net Outside Fee will always equal the Outside Fee and the selection of Affiliated or Third Party Funds will always be revenue-neutral.

(h) With respect to its participation in the Portfolio Advisor Program, prior to purchasing shares in the Affiliated Funds and the Third Party Funds,

(1) Each Independent Fiduciary receives the following written or oral disclosures from Wells Fargo:

(A) A brochure describing the Portfolio Advisor Program; a Portfolio Advisor Program Account Agreement; a description of the allocation models (the Allocation Models); and a reference guide/disclosure statement providing details about the Portfolio Advisor Program, the fees charged thereunder, the procedures for establishing, making additions to and withdrawing from Portfolio Advisor Program Accounts (the Accounts); and other related information.

(B) A risk tolerance and goal analysis questionnaire (the Questionnaire).

(C) Copies of applicable prospectuses (the Prospectuses) for the Funds discussing the investment objectives of the Funds; the policies employed to achieve these objectives; the corporate affiliation existing between Wells Fargo and its affiliates; the compensation paid to such entities; disclosures relating to rebalancing and reallocating Allocation Models; and information explaining the risks attendant to investing in the Affiliated Funds or the Third Party Funds.

(D) Upon written or oral request to Wells Fargo, a Statement of Additional Information supplementing the applicable Prospectus, which describes the types of securities and other instruments in which the Funds may invest, the investment policies and strategies that the Funds may utilize, including a description of the risks.

(E) A copy of the agreement between the Plan and Wells Fargo relating to such Plan's participation in the Portfolio Advisor Program.

(F) A written recommendation of a specific Allocation Model together with a copy of the Questionnaire and response.

(G) Upon written request to Wells Fargo, a copy of its investment advisory agreement and sub-advisory agreement pertaining to the Affiliated Funds as well as its distribution agreement pertaining to the Third Party Funds.

(H) Copies of the proposed exemption and grant notice describing the exemptive relief provided herein.

(I) Written disclosures of Wells Fargo's affiliation or nonaffiliation with the parties who act as sponsors, distributors, administrators, investment advisers and sub-advisers, custodians and transfer agents of the Third Party Funds and the Affiliated Funds; and

(2) In the case of a Section 404(c) Plan,

(A) Wells Fargo provides each Directing Participant or Independent Fiduciary (for dissemination to the Directing Participant) with copies of the documents described above in paragraphs (h)(1) (A)–(I); and,

(B) In addition to the written disclosures, an explanation will be provided to the Independent Fiduciary, upon request, by a Wells Fargo representative (the Wells Fargo Representative) regarding the services offered under the Portfolio Advisor Program, including the operation and objectives of the Funds. Such information will be given to either the Independent Fiduciary or the Directing Participant.

(3) If accepted as an investor in the Portfolio Advisor Program, an Independent Fiduciary or Directing Participant is required to acknowledge, in writing, to Wells Fargo, prior to purchasing shares of the Funds that such Independent Fiduciary or Directing Participant has received copies of the documents described in paragraph (h)(1) of this Section II.

(4) With respect to a Title I Plan that does not permit participant-directed investments as contemplated under section 404(c) of the Act, written acknowledgement of the receipt of such documents is provided by the Independent Fiduciary (i.e., the Plan administrator, trustee, investment manager or named fiduciary, as the recordholder of shares of the Funds.) Such Independent Fiduciary will be required to represent in writing to Wells Fargo that such fiduciary is—

(A) Independent of Wells Fargo and its affiliates;

(B) Capable of making independent decisions regarding the investment of Plan assets;

(C) Knowledgeable with respect to the Plan in administrative matters and funding matters related thereto; and

(D) Able to make an informed decision concerning participation in the Portfolio Advisor Program.

(5) With respect to a Section 404(c) Plan or a Plan that is covered under Title II of the Act, the Directing Participant or the Independent Fiduciary is required to acknowledge, in writing, receipt of such documents and represent to Wells Fargo that such individual is—

(A) Independent of Wells Fargo and its affiliates;

(B) Knowledgeable with respect to the Plan in administrative matters and funding matters related thereto; and,

(C) Able to make an informed decision concerning participation in the Portfolio Advisor Program.

(i) Subsequent to its participation in the Portfolio Advisor Program, each Independent Fiduciary receives the following written or oral disclosures from Wells Fargo with respect to ongoing participation in the Portfolio Advisor Program:

(1) Written confirmations of each purchase or redemption transaction involving shares of an Affiliated Fund

or a Third Party Fund (including transactions resulting from the realignment of assets caused by a change in the Allocation Model's investment mix and from periodic rebalancing of Account assets).

(2) Telephone quotations of such Independent Fiduciary's Plan Account balance.

(3) A periodic, but not less frequently than quarterly, statement of Account specifying the net asset value of the Plan's assets in such Account, a summary of purchase, sale and exchange activity and dividends received or reinvested and a summary of cumulative realized gains and/or losses.

(4) Semiannual and annual reports that include financial statements for the Affiliated Funds and the Third Party Funds as well as the fees paid to Wells Fargo and its affiliates.

(5) A quarterly newsletter or other report pertaining to the applicable Allocation Model which describes the Allocation Model's performance during the preceding quarter, market conditions and economic outlook and, if applicable, prospective changes in Affiliated Fund and Third Party Fund allocations for the Allocation Model and the reasons therefor.

(6) At least annually, a written or oral inquiry from Wells Fargo to ascertain whether the information provided on the Questionnaire is still accurate and to determine if such information should be updated.

(7) At least annually, a termination form (the Termination Form) as described below in Section II(l) and (m).

(j) In the case of a Section 404(c) Plan, the Independent Fiduciary will decide whether the information described in

Section II(i) above is to be distributed by Wells Fargo to the Directing Participants of such Plan or whether the Independent Fiduciary will receive this information and then provide it to the Directing Participants.

(k) If authorized in writing by the Independent Fiduciary or Directing Participant, the Plan is automatically rebalanced on a periodic basis by Wells Fargo to the Allocation Model previously prescribed by the Independent Fiduciary or Directing Participant, if one or more Fund allocations deviates from the Allocation Model prescribed by the Independent Fiduciary or Directing Participant.

(l) In rebalancing a Plan,

(1) Wells Fargo is bound by the Allocation Model and is limited in the degree of change that it can make to an Allocation Model's investment mix.

(2) Wells Fargo is authorized to make changes in the mix of asset classes in a Plan Account within a range of 0–15 percent (plus or minus) for Stock and Bond Fund investments and within a range of 0–30 percent (plus or minus) for Money Market Fund investments without obtaining the prior written approval of the Independent Fiduciary or Directing Participant.

(3) Wells Fargo may not change the asset mix outside the authorized limits unless it provides the Independent Fiduciary or Directing Participant with 30 days' advance written notice of the proposed change and gives the Independent Fiduciary or Directing Participant time to elect not to have the change made.

(4) Wells Fargo may not divide a Fund sub-class unless it provides 30 days' advance written notice to the Independent Fiduciary or Directing Participant of the proposed change and gives such individual the opportunity to object to the change.

(5) Wells Fargo may not replace a Third Party Fund with an Affiliated Fund.

(m) Although an Independent Fiduciary or Directing Participant may withdraw from the Portfolio Advisor Program at any time, Wells Fargo will provide such Independent Fiduciary or Directing Participant with the Termination Form, at least annually, but in all cases where Wells Fargo changes the asset mix outside of the current Allocation Model, when a Fund sub-class is to be divided, when Wells Fargo determines that it is in the best interest of the Plan or to use a Third Party Fund instead of an Affiliated Fund and whenever the Outside Fee is increased. Wells Fargo will provide such written notice to the Independent Fiduciary or Directing Participant at least 30 days prior to the implementation of the change.

(n) The instructions for the Termination Form must—

(1) State that the authorization is terminable at will by the Independent Fiduciary or Directing Participant, without penalty to such, upon receipt by Wells Fargo of written notice from the Independent Fiduciary or Directing Participant; and

(2) Explain that any of the proposed changes noted above in paragraph (m) of this Section, will go into effect if the Independent Fiduciary or Directing Participant does not elect to withdraw by the effective date.

(o) Wells Fargo maintains, for a period of six years, the records necessary to enable the persons described in paragraph (p) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Wells Fargo and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than Wells Fargo shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (p) of this Section II below.

(p)(1) Except as provided in section (p)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (o) of this Section II are unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(p)(2) None of the persons described above in paragraphs (p)(1)(B)–(p)(1)(D) of this paragraph (p) are authorized to examine the trade secrets of Wells Fargo or commercial or financial information which is privileged or confidential.

*Section III. Definitions*

For purposes of this exemption:

(a) The term ''Wells Fargo'' means Wells Fargo Bank, N.A. and any affiliate of Wells Fargo, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Wells Fargo includes——

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Wells Fargo.

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Plan or Plans'' include Keogh plans (Keogh Plans), cash or

deferred compensation plans (e.g., Plans qualified under section 401(k) of the Code), profit sharing plans, pension and stock bonus plans, individual retirement accounts (IRAs), salary reduction simplified employee pension plans (SARSEPs), simplified employee pension plans (SEP–IRAs), custodial account plans as described in section 403(b) of the Code (Section 403(b) Plans), savings incentive match plans for employees (SIMPLEs), and, in the case of a Section 404(c) Plan, the individual account of a Directing Participant.

(e) The term ''Independent Fiduciary'' means a Plan fiduciary which is independent of Wells Fargo and its affiliates and is either——

(1) A Plan administrator, trustee, investment manager or named fiduciary, as the recordholder of shares of the Funds of a Section 404(c) Plan;

(2) An individual covered by a Keogh Plan which invests in shares of the Funds;

(3) An individual covered under a self-directed IRA, SEP–IRA or SARSEP, SIMPLE or Section 403(b) Plan which invests in shares of the Funds;

(4) An employee, officer or director of Wells Fargo and/or its affiliates covered by an IRA, a SEP–IRA or a SARSEP not subject to Title I of the Act; or

(5) A Plan administrator, trustee, investment manager or named fiduciary responsible for investment decisions in the case of a Title I Plan that does not permit individual direction as contemplated by Section 404(c) of the Act.

(f) The term ''Directing Participant'' is a participant in a Plan, such as a Section 404(c) Plan, who is permitted under the terms of the Plan to direct, and who elects to so direct the investment of the assets of his or her account in such Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) on December 3, 1996 at 61 FR 64150.

Written Comments

The Department received one written comment with respect to the Notice. The comment was submitted by Wells Fargo and is intended to clarify the Notice in the following areas:

(1) *Inclusion of Master and Prototype Plans in the Portfolio Advisor Program.* Section II(a) of the General Conditions states, in part, that no Plan investing in the Portfolio Advisor Program may be sponsored or maintained by Wells Fargo and/or its affiliates. Wells Fargo wishes to clarify that this exclusion does not preclude the participation in the Portfolio Advisor Program by a master or prototype Plan sponsored by Wells Fargo and/or its affiliates. Rather, Wells Fargo points out that the exclusion is limited to Plans sponsored by Wells Fargo and its affiliates with respect to their own employees.

(2) *Substitution of Term ''Wells Fargo Representative'' for ''Wells Fargo Personal Financial Officer.''* Section II(H)(2)(B) of the General Conditions states that a Wells Fargo Personal Financial Officer (the Personal Financial Officer) will provide an explanation of the services offered under the Portfolio Advisor Program, including the operation and objectives of the Funds to an Independent Fiduciary or the Directing Participant of a Section 404(c) Plan, upon request. Wells Fargo requests that the term ''Personal Financial Officer'' be deleted and that the term ''Wells Fargo Representative'' be substituted for that term because the title ''Personal Financial Officer'' has been changed. In addition, Wells Fargo requests that the term ''Wells Fargo Representative'' be substituted throughout the Notice, particularly at pages 64155 and 64157.

(3) *Distribution of the Termination Form.* Section II(m) of the General Conditions requires, in part, that Wells Fargo provide an Independent Fiduciary or a Directing Participant with a Termination Form, at least annually, during the first quarter of each calendar year. Wells Fargo requests that this condition be revised to require annual distribution of the Termination Form without any requirement that the Termination Form be delivered during the first calendar quarter of each year. Wells Fargo states that the condition would then be consistent with Representation 27 of the Notice which contains no reference to distribution of the Termination Form within the first quarter of each calendar year.

(4) *Definition of the Term ''Plan or Plans.''* Section III(d) of the Definitions covers the types of Plans that may invest in the Portfolio Advisor Program. Wells Fargo requests that the term include Section 403(b) Plans as well as SIMPLEs. In addition, Wells Fargo wishes to clarify that the term ''cash or deferred compensation plans'' includes Plans qualified under Section 401(k) of the Code.

(5) *Acronym for Wells Fargo Institutional Trust Company N.A. (WFITC).* In Representations 3 and 7 of the Summary of Facts and Representations of the Notice, Wells Fargo notes that the letters ''I'' and ''T'' of the acronym ''WFITC'' have been transposed and should read ''WFITC'' instead of ''WFTIC.''

(6) *Description of the Portfolio Advisor Program.* The first sentence of Footnote 9 of the Summary of Facts and Representations of the Notice states that for any Allocation Model, not more than 30 percent of an investor's assets can be placed in the Money Market Funds. Wells Fargo points out that this sentence is only applicable to the sample Allocation Model shown in Table 4 of the Notice but it is inapplicable to other Allocation Models which may hold more than 30 percent of their assets in Money Market Funds. Accordingly, Wells Fargo requests that this sentence be deleted and states that the remaining text is accurate.

Thus, after giving full consideration to the entire record, including the written comment, the Department has made the aforementioned changes to the Notice. In addition, the Department has decided to grant the exemption subject to the modifications or clarifications described above. The comment letter has been included as part of the public record of the exemption application. The complete application file, as well as all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N–5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

GE Capital Investment Advisors, Inc. Located in New York, New York

[Prohibited Transaction Exemption 97–13; Exemption Application No. D–10318]

Exemption

GE Capital Investment Advisors, Inc. (GECIA) and GECIA Holdings, Inc. (Holdings) shall not be precluded from functioning as a ''qualified professional asset manager'' pursuant to Prohibited Transaction Class Exemption 84–14 (PTE 84–14, 49 FR 9494, March 13, 1984) solely because of a failure to satisfy section I(g) of PTE 84–14, as a result of General Electric Company's ownership interest in them, including any of their subsidiaries or successors which provides investment advisory, management or related services and is registered under the Securities and Exchange Act of 1934, as amended, or the Investment Advisors Act of 1940, as amended; provided the following conditions are satisfied:

(A) This exemption is not applicable to any affiliation by GECIA or Holdings with any person or entity convicted of

any of the felonies described in part I(g) of PTE 84–14, other than General Electric Company; and

(B) This exemption is not applicable with respect to any convictions of General Electric Company for felonies described in part I(g) of PTE 84–14 other than those involved in the G.E. Felonies, described in the Notice of Proposed Exemption.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on November 25, 1996 at 61 FR 59912.

**EFFECTIVE DATE:** This exemption is effective as of January 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Givens 401(k) Savings and Retirement Plan (the Plan) Located in Chesapeake, VA

[Prohibited Transaction Exemption 97–14; Exemption Application No. D–10364]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase from the Plan of the Plan's interest in a group annuity contract (the GAC Interest) by Givens, Incorporated, a sponsor of the Plan; provided the following conditions are satisfied:

(a) The sale is a one-time transaction for cash;

(b) The Plan suffers no loss nor incurs any expense in connection with the sale; and

(c) The Plan receives a purchase price of no less than the fair market value of the GAC Interest as of the date of the sale.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on December 17, 1996 at 61 FR 66331.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 12th day of February, 1997.

Ivan Strasfeld,

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 97–3838 Filed 2–14–97; 8:45 am]

**BILLING CODE 4510–29–P**

## NATIONAL CAPITAL PLANNING COMMISSION

### Environmental Impact Statement; Public Meeting; Availability Washington, D.C. Convention Center, Construction and Operation

**AGENCY:** National Capital Planning Commission.

**SUMMARY:** The National Capital Planning Commission (Commission) announces the availability of a Draft Environmental Impact Statement (DEIS) prepared by the Commission and the District of Columbia Government as part of the requirements for Commission consideration of a proposed Urban Renewal Plan modification and site and building plans for the proposed construction and operation of a Convention Center in Downtown Washington, D.C. The DEIS analyzes impacts on land use, the environment, transportation and historic and cultural resources as well as socio-economic impacts of three proposed alternatives. These alternatives include: (1) The Mount Vernon Square site (bounded by K, 7th, 9th and N Streets, NW.); (2) Northeast No. 1 (generally between First Street, NE. and the railroad track); and (3) a No Action Alternative which would result in no new construction.

In addition, a public meeting will be held to elicit public comments on the DEIS prior to the issuance of a final EIS. That meeting will also serve as part of the public consultation process required by the National Historic Preservation Act.

**DATES:** The public meeting will be held on Tuesday, March 18, 1997 at the D.C. Convention Center at 900 9th St. NW., beginning at 7:30 p.m. Parties interested in speaking at that time, should contact the Commission at (202) 482–7200. Speakers will be recognized in the order that they call. In addition, individuals may sign up to speak at the door.

All written comments on issues regarding the environmental review of the proposed Convention Center must be postmarked by March 31, 1997 and sent to the National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Suite 301, Washington, D.C. 20576. Attention: Maurice Foushee, Community Planner, Phone (202) 482–7240.

**FOR FURTHER INFORMATION CONTACT:** Please contact Ms. Sandra H. Shapiro, General Counsel at (202) 482–7223.

Sandra H. Shapiro,

*General Counsel, National Capital Planning Commission.*

[FR Doc. 97–3822 Filed 2–14–97; 8:45 am]

**BILLING CODE 7502–02–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–3453–MLA; ASLBP No. 97–723–02–MLA]**

### Atlas Corporation; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and

2.1207 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

Atlas Corporation

*(Request for License Amendment)*

The hearing, if granted, will be conducted pursuant to 10 C.F.R. Subpart L of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a requested license amendment by Atlas Corporation to change the completion date for placement of the final radon barrier on the pile at its Moab, Utah facility. Pursuant to the provisions of 10 C.F.R. § 2.1205(a) and Federal Register Notice, 62 F.R. 3313 (January 22, 1997), John Francis Darke opposes this amendment and requests a hearing. The Presiding Officer in this proceeding is Administrative Judge G. Paul Bollwerk, III. Pursuant to the provisions of 10 C.F.R. § 2.722, Administrative Judge Charles N. Kelber has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bollwerk and Judge Kelber in accordance with 10 C.F.R. § 2.701. Their addresses are:

Administrative Judge G. Paul Bollwerk, III, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Charles N. Kelber, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Issued at Rockville, Maryland, this 11th day of February 1997.

B. Paul Cotter, Jr.,

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 97–3885 Filed 2–14–97; 8:45 am]

BILLING CODE 7590–01–P

**[Docket No. 50–368]**

## Correction to Exemption

ENTERGY OPERATIONS, INC. (Arkansas Nuclear One, Unit 2).

In notice document 97–2377 beginning on page 4818, in the issue of Friday, January 31, 1997, make the following correction:

On page 4819, in the third column, second full paragraph, in line 5, (61 FR 20846) should be corrected to read, (61 FR 37774).

Dated at Rockville, Maryland, this 10th day of February 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–3887 Filed 2–14–97; 8:45 am]

BILLING CODE 7590–01–P

## Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 90th meeting on March 20 and 21, 1997, in Room T–2B3, at 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The schedule for this meeting is as follows:

Thursday, March 20, 1997—8:30 A.M. until 6:00 P.M.

Friday, March 21, 1997—8:30 A.M. until 6:00 P.M.

During this meeting, the Committee plans to consider the following:

A. *Meeting with the Directors of the Division of Waste Management and the Spent Fuel Projects Office*—The Directors will discuss priorities for their respective divisions and highlight issues they may wish the Committee to consider over the next year.

B. *Defense In-Depth Philosophy*—The NRC staff will discuss this philosophy and how it applies to the regulation of nuclear waste activities. This discussion will revisit the history of the defense in-depth philosophy and the rationale behind the high-level waste subsystem requirements in the Commission's regulations (10 CFR Part 60).

C. *Planning for Commission Meeting*—The Committee will prepare for their April 1997 meeting with the Commission.

D. *BIOMOVS II*—The Committee will be briefed by the NRC staff on the current status of the Biosphere Model Validation Study, Phase II. Central to this work is defining the reference biosphere and critical group.

E. *Preparation of ACNW Reports*—The Committee will discuss proposed reports, including the specification of a critical group and reference biosphere to be used in the performance assessment for a nuclear waste disposal facility, and other topics discussed during the meeting as the need arises.

F. *Committee Activities/Future Agenda/Appointment of New Members*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members. The Committee will also consider the qualifications of potential new ACNW members. A portion of this session may be closed to public attendance to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

G. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the Federal Register on October 8, 1996 (61 FR 52814). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch

(telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EST.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the ''NRC MAIN MENU.'' Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: February 2, 1997.

Andrew L. Bates,

*Advisory Committee Management Office.*

[FR Doc. 97–3884 Filed 2–14–97; 8:45 am]

BILLING CODE 7590–01–P

## Natural Resources Defense Council Receipt of Petition and Issuance of a Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated January 8, 1997, Thomas B. Cochran, on behalf of Natural Resources Defense Council (NRDC), requested that the Nuclear Regulatory Commission (Commission) take immediate action with regard to Envirocare of Utah, Inc. Specifically, the Petition requested NRC to take the following actions:

(1) Immediately revoke the license or licenses, or cause the state of Utah to revoke its agreement state license or licenses, under which Envirocare is currently permitted to accept low-level radioactive waste and mixed waste for permanent disposal.

(2) Immediately revoke the NRC 11e.(2) byproduct material license under which Envirocare is currently permitted to accept uranium mill tailings for disposal.

(3) Immediately revoke any other NRC license, or agreement state license, if such license exists, held by Envirocare, Khosrow Semnani, or any entity controlled or managed by Khosrow Semnani.

(4) Prohibit the future issuances of any license by the NRC, the State of Utah, or other NRC agreement state, to Khosrow Semnani or any company or entity which he owns, controls, manages, or [with which he] has a significant affiliation or relationship.

(5) Suspend the agreement with the state of Utah under which regulatory authority has been transferred from the NRC to the Utah's Bureau of Radiation [Division of Radiation Control], until the State of Utah can demonstrate that it can operate the Bureau of Radiation [Division of Radiation Control] in a lawful manner, and without the participation of licensees, or employees of licensees, in Bureau of Radiation [Division of Radiation Control] oversight roles.

As a basis for the request, the Petitioner asserts that on December 28, 1996, an article in *The Salt Lake Tribune* reported that between 1987 and 1995 Mr. Semnani made secret cash payments to Mr. Larry F. Anderson, who served as Director of the Utah Division of Radiation Control from 1983 until 1993. The article also reported that the Utah Attorney General's office has initiated a criminal investigation into the matter.

The NRC response to the Petitioner's request regarding the Agreement State program is provided in a ''NRC Staff Evaluation of Natural Resources Defense Council Request to Suspend Section 274 Agreement With The State of Utah.'' The other issues raised in the Petition have been evaluated by the Director of the Office of Nuclear Material Safety and Safeguards. After review of the Petition, the Director has denied the Petitioner's requests.

The Director's Decision concluded that no substantial health and safety issues have been raised regarding Envirocare that would require initiation of the immediate action requested by the NRDC. The NRDC has not provided any information in support of its requests of which the NRC was not already aware. Moreover, NRC inspections of the Envirocare facility have not revealed the existence of extraordinary circumstances that would warrant immediate suspension of the Envirocare license. In addition, the staff's review of the technical basis for its issuance of the license and subsequent amendments found no evidence of the existence of any substantial health or safety issue that would justify the actions requested by the NRDC. However, NRC will monitor the investigations and actions being conducted by the State of Utah. If NRC receives any specific information that there is a public health or safety concern as a result of these actions or from any other source, including the NRC ongoing Agreement State oversight activities, NRC will evaluate that information and take such action as it deems is warranted at that time.

The complete ''Director's Decision under 10 CFR § 2.206'' (DD–97–02) is available for public inspection in the Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C. 20555. The Director's Decision is also available on the NRC Electronic Bulletin Board at (800) 952–9676.

A copy of this Decision will be filed with the Secretary for the Commission's review, in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 7th day of February 1997.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 97–3886 Filed 2–14–97; 8:45 am]

BILLING CODE 7590–01–P

**[Docket No. 50–245]**

## Northeast Utilities; Millstone Nuclear Power Station, Unit 1; Issuance of Director's Decision under 10 CFR 2.206

Notice is hereby given that the Acting Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated January 5, 1995, by Mr. Anthony J. Ross (Petition for action under 10 CFR 2.206). The Petition pertains to Millstone Nuclear Power Station, Unit 1.

In the Petition, the Petitioner described several examples of what he alleged were violations of Procedure WC–8, which required that maintenance and test equipment be signed out from and returned to a custodian. The Petitioner requested that the U.S. Nuclear Regulatory Commission institute sanctions against his department manager, his first-line supervisor, and two co-workers for engaging in deliberate misconduct in violation of 10 CFR 50.5. The Petitioner also asserted that the NRC ''desperately needs to conduct an investigation'' into the procedure violations and to audit the Millstone Unit 1 maintenance department measuring and test equipment folders to reveal widespread problems regarding noncompliance with this procedure.

The Acting Director of the Office of Nuclear Reactor Regulation has determined to grant the Petition in part, and deny the Petition in part. The reasons for this decision are explained in the ''Director's Decision Under 10 CFR 2.206'' (DD–97–04), the complete text of which follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the temporary local public document room located at the Waterford Library, ATTN: Vince

Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision in that time.

Dated at Rockville, Maryland, this 11th day of February 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

*Acting Director, Office of Nuclear Reactor Regulation.*

Director's Decision Under 10 CFR 2.206

*I. Introduction*

On January 5, 1995, Mr. Anthony J. Ross (Petitioner) filed a Petition with the Executive Director for Operations of the Nuclear Regulatory Commission (NRC) pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). In the Petition, the Petitioner raised concerns regarding noncompliance with Procedure WC–8, ''Control and Calibration of Measuring and Test Equipment,'' at Millstone Nuclear Power Station, Unit 1, and requested that escalated enforcement action be taken. Specifically, the Petitioner provided several examples of what he alleged were violations of Procedure WC–8, which he stated required that measuring and test equipment (M&TE) be signed out from, and returned to, a custodian upon completion of work. The Petitioner requested that the NRC institute sanctions against his department manager, his first-line supervisor, and ''two coworkers'' [1] for engaging in deliberate misconduct in violation of 10 CFR 50.5 in failing to comply with Procedure WC–8. The Petitioner also asserted that the NRC should conduct an investigation into violations of this procedure and audit the Millstone Unit 1 maintenance department M&TE folders for widespread problems regarding noncompliance with this procedure.

On February 23, 1995, the NRC informed the Petitioner that the Petition had been referred to the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206 of the Commission's regulations. The NRC also informed the Petitioner that the staff would take appropriate action within a reasonable time regarding the specific concerns raised in the Petition. On the basis of a review of the issues raised by the Petitioner as discussed below, I have concluded, for the reasons explained below, that the Petition is denied with regard to the request for escalated enforcement action and instituting sanctions against the department manager, first-line supervisor, and two co-workers, but granted with regard to the requests for an ''investigation into the above mentioned procedure violations'' and for the NRC to ''audit the Unit 1 maintenance department M&TE folders.''

*II. Discussion*

In the Petition, the Petitioner raises concerns regarding numerous noncompliances with Procedure WC–8, Revision 0, at Millstone Unit 1. Specifically, the Petitioner states that (1) quality assurance (QA) [2] test meter 1587 was signed out on October 13, 1994, for weekly battery readings, and as of October 19, 1994, the user had not returned the meter or signed it in. The Petitioner states that this practice was in violation of Procedure WC–8, which stated ''return M&TE to custodian upon completion of work,'' [3] (2) although he identified a problem with Procedure WC–8 (specifically, who was responsible for the actual signing in and out of M&TE) to his first-line supervisor on November 7, 1994, as of December 1994, the procedure still had not been changed (in accordance with Procedure DC–4, ''Procedural Compliance,'' which requires that if a procedure conflict or interpretation problem exists, a change or revision should be made); (3) on November 10, 1994, he noticed on a station form that someone signed in the QA meter with the return date of October 13, 1994, and that this was a willful falsification (back-dating) of a nuclear record; (4) on November 17, 1994, an electrician co-worker was directed by their first-line supervisor to willfully violate Procedure WC–8 by signing out his own M&TE, and signed out his own M&TE although both the supervisor and co-worker knew they were to have the custodian sign out the equipment; (5) on November 21, 1994, his department manager instructed the custodian to give a spare key for the QA locker to the Millstone Unit 1 control room so the control room could sign out equipment at night; and (6) on November 25, 1994, a mechanic signed out M&TE without a custodian.

In addition, the Petitioner states that he believes that his department manager was directly responsible for sharing the effects of a new, revised, or rewritten procedure with the employees of his department if the procedure directly affected day-to-day operations. The Petitioner asserts that this individual's ''lack of communications'' regarding the procedure has caused a ''widespread problem of procedure noncompliance.'' [4]

In letters to Northeast Nuclear Energy Company (NNECO), licensee for Millstone Units 1, 2, and 3, dated December 5 and 28, 1994, and February 14, 1995, the NRC staff raised a number of maintenance-related issues. In those letters, the NRC staff requested NNECO to review these issues and submit a written response. Among these issues, the NRC requested NNECO to review two issues associated with Procedure WC–8 that are now presently being raised by the Petitioner. These were that: (1) the Millstone Unit 1 QA test meter 1587 was signed out on October 13, 1994, to perform weekly battery readings, but as of October 19, 1994, the user had not returned the meter or signed in the meter; and (2) many members of the Millstone Unit 1 Maintenance Department never received training on Procedure WC–8, Rev. 0, within 60 days of the effective date of June 20, 1994, as required by the documentation of training requirements form of NNECO Procedure DC–1.

In a letter dated March 6, 1995, NNECO responded to the issue regarding failure to return the QA meter signed out on October 13, 1994. In its letter, NNECO stated that on October 13, 1994, a maintenance electrician signed out QA test meter 1587 to perform weekly battery surveillances and signed it back in on the M&TE log on the same day. On October 19, 1994, a different

[1] The ''two coworkers'' are understood to be an individual the Petitioner alleges willfully falsified (back-dated) an entry on the form to indicate that the meter was returned on October 13, 1994, and an individual the Petitioner alleges willfully violated Procedure WC–8 on November 17, 1994, by signing out his own M&TE.

[2] Quality Assurance comprises those quality assurance actions related to the physical characteristics of a material, structure, component, or system which provide a means to control the quality of the material, structure, component, or system to predetermined requirements.

[3] This procedure had become effective on June 20, 1994. It required that a ''designated custodian'' enter the date of issue and date of return on the custody and usage record, and that the user of the equipment return it to the custodian upon completion of work. In Attachment 1 to the procedure, ''custodian'' was defined as the individual designated by the department head to store, track, and issue the department's M&TE.

[4] NNECO Procedure DC–1 requires that the licensee select the training requirements to be used in training employees whenever procedures are revised, and indicate the type of training that would be performed on Attachment 5 to Procedure DC–1. For Procedure WC–8, Revision 0, the training required was marked as ''training to be done by Department or Nuclear Training Department within 60 days of the effective date and prior to performance of procedure.''

maintenance electrician signed out and returned QA test meter 1587. Sometime later that day, QA test meter 1587 was signed out again and subsequently returned the same day. NNECO stated that it was unable to determine, based on interviews with the parties involved and a review of the custody and usage record, the exact circumstances surrounding QA test meter 1587. However, what was known was that QA test meter 1587 had been signed out once on October 13 and twice on October 19, 1994. NNECO's review further concluded that strict compliance with Procedure WC–8 was not being observed at all three Millstone units in that a custodian was not being used to ensure that certain actions (i.e., signing in and out M&TE on the M&TE log) were being accomplished. However, NNECO stated that it believed it met the ''intent of the procedure'' in that the user of the M&TE stored, tracked, and issued the equipment as required by the procedure, except that the custodian was not involved. As a result of its review, NNECO undertook certain corrective actions. Specifically, NNECO held a site-wide meeting for all departments responsible for use or issuance of QA M&TE on February 21, 1995, to determine corrective actions necessary to ensure procedural compliance. Subsequently, NNECO revised Procedure WC–8 on April 27, 1995, to specifically allow the user of M&TE to sign QA test equipment in and out. The custodian is still responsible for storing and tracking M&TE. In addition, Millstone Unit 1 control room personnel responsible for accessing QA M&TE were made aware of the logging requirements.

The NRC conducted a special safety inspection from May 15 through June 23, 1995, at the Millstone station. During this inspection, the staff reviewed a number of the concerns, including the concerns about QA test meter 1587 and the other examples of noncompliance with Procedure WC–8 alleged by the Petitioner, and issued its findings in Inspection Report (IR) 50–245/95–22, 50–336/95–22, 50–423/95–22 (95–22), dated July 21, 1995.

During the inspection, the NRC staff reviewed the custody and usage record sheets for QA test meter 1587 from September 27 to November 11, 1994. Based on this review, the staff was unable to determine whether QA test meter 1587 was properly logged in and out in October 1994 or if the custody and usage record sheet was back-dated. The NRC staff discussed this issue with the workers involved who indicated that they had no recollection of the exact circumstances surrounding QA test meter 1587 and that, to the best of their knowledge, QA test meter 1587 was logged in and out properly. Therefore, the staff was unable to determine whether QA test meter 1587 was controlled improperly and whether the Petitioner's co-worker willfully falsified (by back-dating) a nuclear record (M&TE log).

The staff also reviewed the original procedure and determined that although Procedure WC–8, Rev. 0, was not clear in specifying who was responsible for the actual signing in and out of equipment, NNECO was meeting the intent of the procedure in that M&TE was stored, tracked, and issued in a controlled manner. The NRC staff further concluded that NNECO's additional corrective actions (i.e., modifying the procedure) were adequate in clarifying the procedure and should prevent interpretation problems in the future.

Notwithstanding the findings of the inspection report, however, the NRC has reconsidered this matter and determined that NNECO was not in compliance with Procedure WC–8, Rev. 0. This determination is supported by the fact that NNECO admitted in its March 6, 1995, letter that it was not in compliance with Procedure WC–8. In addition, the NRC has reviewed the custody and usage records for signing in and out M&TE on November 17 and 25, 1994, and determined that an electrician and mechanic had signed out their own M&TE, respectively, on those dates. Accordingly, the Petitioner's assertions that the procedure was violated when a co-worker electrician signed out his own M&TE on November 17, 1994, and a mechanic signed out M&TE on November 25, 1994, is substantiated. However, the NRC has been unable to confirm that either of these individuals had been ''directed'' by supervision to sign out the equipment.

In addition, NNECO's review, as described in its letter dated March 6, 1995, and verified by the staff in IR 95–22, determined that keys had been available during this timeframe in all Millstone control rooms and were in the possession of security personnel to allow access to QA M&TE storage locations. These groups required access to these areas in order to properly execute their duties. Therefore, since the custodian did not sign in and out the equipment, the Petitioner's additional assertion that the procedure was violated because security personnel and personnel in the Millstone Unit 1 control room could sign out M&TE at night is substantiated. However, the NRC has been unable to confirm that the department manager had instructed the custodian to give a spare key to the control room so the control room could sign out M&TE at night.

Furthermore, the staff has determined that, since there were no safety consequences as a result of these events, the noncompliances with Procedure WC–8 did not constitute a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or a previous licensee finding that occurred within the past 2 years of the inspection at issue, adequate corrective actions were implemented regarding Procedure WC–8, and the violation was not willful, the violation would have been categorized in accordance with the enforcement policy in effect at the time of the inspection as a non-cited Severity Level V violation and would not have been the subject of formal enforcement action.[5]

In addition, since the procedure was not clear in describing specific responsibilities and NNECO believed it was meeting the intent of the procedure, the NRC has concluded that the Petitioner's department manager, his first-line supervisor, and two co-workers did not deliberately violate NRC regulations or the Millstone Unit 1 operating license and, therefore, did not violate the provisions of 10 CFR 50.5. Moreover, NNECO revised Procedure WC–8 on April 27, 1995, and the procedure now more clearly allows the user of the M&TE to sign in and out QA test equipment. The custodian still is responsible for storing and tracking M&TE. Therefore, the staff has determined that, although the Petitioner is correct in that the procedure was not revised as of December 1994, the procedure was subsequently revised, so that Procedure DC–4 was not violated.

By letter dated April 26, 1995, NNECO provided its review of whether members of the Maintenance Department received training within 60

[5] The staff has reconsidered this violation in accordance with the current enforcement policy (NUREG–1600, ''General Statement of Policy and Procedures for NRC Enforcement Action'') and has concluded that the violation is below the level of significance of Severity Level IV violations. This determination is based on the fact that NNECO was meeting intent of the procedure; there was negligible impact on safety; NNECO's interpretation of the M&TE custodian's responsibilities does not indicate a programmatic problem that could have safety or regulatory impact; if the violation recurred, it would not be considered a significant concern; and the violation was not willful. Therefore, if considered under the new enforcement policy, this violation would be classified as a minor violation. Minor violations, as described in the current enforcement policy, are not the subject of formal enforcement action and are usually not cited in inspection reports. To the extent that such violations are described, they are now noted as non-cited violations.

days of Revision 0 of Procedure WC–8 (June 20, 1994). In its letter, NNECO stated that no documentation indicating that training was conducted for Procedure WC–8, Rev. 0, had been found. While no training records were located, NNECO stated that the Millstone Unit 1 Maintenance Manager recalled that the procedure was discussed at a Maintenance Department meeting within 60 days of its effective date.

The NRC staff reviewed Procedure DC–1 and determined that since NNECO could not locate the training records for Procedure WC–8, Rev. 0, and that training by the Maintenance Department or the Nuclear Training Department was not conducted within 60 days of the effective date for Procedure WC–8, Rev. 0, NNECO was in violation of Procedure DC–1.

The staff's review of NNECO's April 26, 1995, response to the NRC letter dated February 14, 1995, was documented in IR 95–22. The staff has reviewed NNECO's corrective actions that included NNECO management reemphasizing the importance of training on new or revised procedures and following procedures, the revising of Procedure WC–8, and training on the revised procedure. Based on that review, the staff has determined that the corrective actions the licensee has taken are acceptable. The staff has further determined that since there were no safety consequences as a result of this event, it was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation or a previous licensee finding that occurred within the past 2 years of the inspection at issue, adequate corrective actions were implemented, and the violation was not willful, the violation would have been categorized in accordance with the enforcement policy in effect at the time of the inspection as a non-cited Severity Level V violation and would not have been the subject of formal enforcement action.[6]

[6] The staff has reconsidered this violation in accordance with the guidance in the current enforcement policy and has concluded that the violation is below the level of significance of Severity Level IV violations. This determination is based on the fact that there was negligible impact on safety; the violation does not indicate a programmatic problem that could have safety or regulatory impact; if the violation recurred, it would not be considered a significant concern; and the violation was not willful. Therefore this violation is classified as a minor violation and, as previously discussed, minor violations are not normally the subject of formal enforcement action and are usually not cited in inspection reports. To the extent that such violations are described, they are characterized as non-cited violations.

*III. Conclusion*

The institution of a proceeding pursuant to 10 CFR 2.206 is appropriate only if substantial health and safety issues have been raised. See Consolidated Edison Company of New York (Indian Point Units 1, 2, and 3) CLI–75–8, 2 NRC 173, 175 (1975) and Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD–84–7 19 NRC 899, 924 (1984). This is the standard that has been applied to the concerns raised by the Petitioner to determine whether the action requested by the Petitioner, or other enforcement action, is warranted.

On the basis of the above assessment, I have concluded that, although certain minor procedural violations occurred, no substantial health and safety issues have been raised by the Petition regarding Millstone Unit 1 that would require initiation of enforcement action. Therefore, to the extent that the Petitioner requests that escalated enforcement action be taken against individuals and NU for violations of Procedure WC–8 or failure to train employees on the procedure, the Petition has been denied. However, as described above, the NRC conducted an inspection into the alleged violations of Procedure WC–8 from May 15 through June 23, 1995, and conducted an audit of the custody and usage record sheets. Therefore, to the extent that the Petitioner has requested an NRC ''investigation into the above mentioned procedure violations'' and for the NRC to ''audit the Unit 1 maintenance department, M&TE folders,'' the Petition has been granted.

As provided in 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes a review of the Decision in that time.

Dated at Rockville, Maryland, this 11th day of February 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.,

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–3888 Filed 2–14–97; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Extension:* Rule 15c1–7 SEC File No. 270–146, OMB Control No 3235–0134.

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for approval of extension on the following rule:

Rule 15c1–7 requires broker-dealers to make a record of each transaction it effects for customer accounts over which the broker-dealer has discretion. The Commission estimates that 500 respondents collect information annually under Rule 15c1–7 and that approximately 33,333 hours would be required annually for these collection. The total annual burden hours have been increased from 16,667 hours as a result of the growth in the securities market.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimate average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: February 10, 1997.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–3917 Filed 2–14–97; 8:45 am]

BILLING CODE 8010–01–M

### Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Chyron Corporation, Common Stock. $.01 Par Value) File No. 1–9014

February 12, 1997.

Chyron Corporation (''Company'') has filed an application with the Securities

and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Chicago Stock Exchange, Inc. (''CHX'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Security is currently listed both on the Chicago Stock Exchange and the New York Stock Exchange. The Security involved is the common stock of the Company traded on the CHX. The Company filed this application because it no longer wishes its Security to be listed on the CHX. The reasons alleged in the application include the fact that the Company wishes to avoid the direct and indirect costs of dual listings.

Any interested person may, on or before March 6, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 97–3914 Filed 2–14–97; 8:45 am]

BILLING CODE 8010–01–M

## Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following open meeting during the week of February 17, 1997.

An open meeting will be held on Tuesday, February 18, 1997, at 10 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Tuesday, February 18, 1997, at 10 a.m., will be:

(1) The commission will consider whether to issue a release adopting amendments shortening the holding periods under Rule 144.

**FOR FURTHER INFORMATION, PLEASE CONTACT:** Martin P. Dunn or Elizabeth M. Murphy, Office of Chief Counsel, Division of Corporation Finance, at (202) 942–2900.

(2) The Commission will consider whether to issue a release proposing amendments to the Regulation S safe harbor procedures and related changes for offshore sales of equity securities.

**FOR FURTHER INFORMATION, PLEASE CONTACT:** Paul M. Dudek or Walter G. Van Dorn, Jr., Office of International Corporate Finance, Division of Corporation Finance, at (202) 942–2990.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: February 13, 1997.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 97–4090 Filed 2–13–97; 3:57 pm]

BILLING CODE 8010–01–M

## SECRUTIES AND EXCHANGE COMMISSION

**[Release No. 34–38262; File No. SR–CBOE–97–05]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Waiver of Transaction Charges for FLEX Equity Options

February 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 30, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend its waiver of Exchange fees on transactions in Equity FLEX options traded on the Exchange until further notice. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, Proposed Rule Change*

Purpose

In conjunction with the start of trading of FLEX Equity options, the Exchange waived Exchanges fees related to transactions in Equity FLEX until January 31, 1997. The Exchange has now determined to extend the waiver of the transaction fees because the Exchange believes that the waiver will encourage trading in this new product and will place the Exchange in a position to compete effectively for business in Equity FLEX options with other exchanges trading the same product.

The Exchange intends to establish transaction charges for FLEX Equity options at some time in the future.[2] However, the Exchange is now proposing to waive the transaction fees until further notice. The fees affected and the amount of the fees absent any reduction or rebate[3] are: (1) Exchange transaction fees, which are $.05 per contract side for market-makers, $.06 for member firm proprietary trades, $.15 for customer trades for options under $1, and $.30 for customer trade for options of $1 or more; (2) trade match fees, which are $.04 per contract side for all trades; and (3) floor broker fees, which are $.03 per contract side for all trades. The forgoing fee changes are being

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission notes that any imposition of transaction charges for FLEX Equity Options would have to be submitted to the Commission pursuant to Section 19(b) of the Act.

[3] The fees may actually be less than these amounts pursuant to the Exchange's Prospective Fee Reduction Schedule, the Customer Large Trade Discount Program, and rebate programs that have been filed with the Commission as part of the Exchange's fee schedule.

implemented by the Exchange pursuant to CBOE Rule 2.22.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) of the Act [5] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) [6] of the Act and subparagraph (e) of Rule 19b–4 [7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–05 and should be submitted by March 11, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–3918 Filed 2–14–97; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5)

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–38270; File No. SR–PSE–97–02]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to Proprietary Brokerage Order Routing Terminals

February 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 1996, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to adopt a formal policy governing the use by PSE Members and Member Organizations (''Members'') of any proprietary brokerage order routing terminals (''Terminals'') on the Options Floor of the Exchange. The text of the proposed policy is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange is proposing to adopt a policy governing proprietary brokerage order routing terminals that Members may use on the Options Floor of the Exchange. The Policy includes specific provisions on Exchange approval of Terminals; Restrictions on Members' use of Terminals; Exchange Inspection and Audit; Exchange Liability; Termination of Exchange Approval; and pilot status of the program.

Exchange Approval

The proposed Policy specifies that Members must obtain prior Exchange approval to use any proprietary brokerage order routing terminals on the Options Floor. It states that the Exchange may grant such approval for use on an issue-by-issue basis. To request such approval, Members must submit a letter of application to the Exchange specifying the make, model number, functions and intended use of the equipment, and must also provide additional information upon the request of the Exchange. The policy further provides that the format of any orders to be transmitted over the Terminals must also be pre-approved by the Exchange.

The Exchange believes that it should have the flexibility to permit the use of Terminals on an issue-by-issue basis so that it will have an opportunity to observe the use of Terminals in particular trading crowds and to consider the benefits and any unforeseen problems that may result before floor-wide implementation occurs.

Paragraph 2 of the Policy states that, in considering the approval of an application, as well as whether a previously issued approval should be withdrawn, the Exchange will take into

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

account such factors as the physical size of the Terminal; space available at the post where the Terminal is to be used; telecommunication, electrical and radio frequency requirements; Terminal characteristics and capacity; and any factors that the Exchange considers relevant in the interest of maintaining fair and orderly markets, the orderly and efficient conduct of Exchange business, the maintenance and enhancement of competition, the ability of the Exchange to conduct surveillance of the use of the Terminal and the business transmitted through it, the adequacy of applicable audit trails, and the ability of the Terminal to interface with other Exchange facilities.

Paragraph 3 of the Policy provides that Members must report to the Exchange every proposed material change in functionality of a Terminal and every proposed change in the use of a Terminal. It further provides that Members must not implement any such proposed changes unless and until they have been approved by the Exchange, and that Members must also promptly file with the Exchange supplements to their applications whenever the information currently on file becomes inaccurate or incomplete for any reason.

Restrictions on Use of Terminals

Paragraph 4 sets forth four restrictions applicable to Members' use of Terminals on the Options Floor. The first restriction is that Members may receive brokerage orders in the trading crowd via Terminals, but must represent such orders in the trading crowd by open outcry in a manner that is consistent with Exchange rules.

The second restriction states that when a Member executes an order that was received over a Terminal, the Member must fill out and time stamp a trading ticket within one minute of the execution. Exchange rules on record keeping and trade reporting are unchanged.

The third restriction states that Terminals may be used to receive brokerage orders only, and that Terminals may not be used to perform a market making function. It states that any system used by a Member to operate a Terminal must be separate and distinct from any system that may be used by a Member of any person associated with a Member in connection with market making functions. It further states that, for the purpose of this paragraph, orders initiated from off the floor of the Exchange that are not counted as ''Market Maker transactions'' within the meaning of PSE Rule 6.32 and that do not create a pattern of offering in the aggregate either to make two-sided markets or simultaneously to represent opposite sides of the market in any class of options shall not be deemed to be used to perform a market making function.

The Exchange believes that if Terminals were permitted to be used to perform market making functions from off the floor of the Exchange, it may become undesirable for Exchange market makers to continue to assume the costs and obligations associated with being a registered market maker, which in turn could harm the liquidity and quality of the Exchange's market. The Exchange is particularly concerned that off-floor market making effectively would establish a market making structure devoid of affirmative market making obligations that could result in less deep and liquid markets during periods of market stress, when off-floor Terminal market makers would not be required to continue making markets. Moreover, the Exchange believes that surveillance of market making through the Terminals currently would be particularly difficult.

The Exchange intends to interpret the term ''market making'' in accordance with its traditional definition as defined under the Act, *i.e.*, holding one's self out as being willing to buy and sell a particular security on a regular or continuous basis.[3] The definition of market making would not capture parties who enter orders on one side of the market; nor would it capture parties who enter two-sided limit orders on occasion. A party would not be deemed to be engaging in market making unless it regularly or continuously holds itself out as willing to buy and sell securities.

The fourth restriction in Paragraph 4 states that no Member or any person associated with a Member may use for the benefit of such member or any person associated with such Member any information contained in any brokerage order in the Terminal system until that information has been disclosed to the trading crowd. Accordingly, prior to placing an order or making or changing a bid or offer on the Exchange or in any other securities or futures market, a Member must disclose such information to the trading crowd. The Exchange believes that this restriction will help to ensure that Members using Terminals trade on the same terms and conditions as other market participants and do not receive any trading advantages to interact with orders transmitted through the Terminals.

[3] *See.* 15 U.S.C. 78c(a)(38).

Inspection and Audit

Paragraph 5 of the proposed policy states that the operation and use of all aspects of the Terminal and all orders entered through the Terminal are subject to inspection and audit by the Exchange at any time upon reasonable notice. It further provides that Members must furnish to the Exchange such information concerning the Terminal as the Exchange may from time to time request upon reasonable notice, including without limitation an audit trail identifying transmission, receipt, entry, execution and reporting of all orders. For the purpose of this paragraph, a notice of at least twenty-four hours shall be deemed to be reasonable (however, shorter periods may be provided in appropriate circumstances).

Exchange Liability

Paragraph 6 states that neither the Exchange nor its directors, officers, employees or agents shall be liable to a Member, a Member's employees, a Member's customers or any other person for any loss, damage, cost, expense or liability arising from the installation, operation, relocation, use of, or inability to use a Terminal on the floor of the Exchange (including any failure, malfunction, delay, suspension, interruption or termination in connection therewith).

Termination of Approval

Paragraph 7 of the Policy provides that the Exchange may at any time determine to terminate all approvals for the installation and use by Members of Terminals on the floor of the Exchange or at particular trading posts, in which event such approvals will be deemed terminated on the 30th calendar day following the day on which the Exchange gives notice to such Member(s) of such termination of approval. It further provides that Members who incur costs in developing or implementing proprietary systems do so at their own risk, due to the fact that the Exchange intends to roll out its own brokerage order routing system for Floor Brokers. It further provides that a Member's approval to use a Terminal may also be summarily terminated by the Exchange, once notice has been provided to the affected Member, if any statement by such Member in its application or any supplement thereto is inaccurate or incomplete, or if such Member has failed to comply with any provision of this Policy, or if the operation of the Terminal is causing operational difficulties on the floor of the Exchange, and the Member has

failed to cure the same within seven calendar days following the giving of notice (or such shorter period of time as the Exchange may deem appropriate if it determines the circumstances have created a situation requiring a shortened cure period). It states that Members must immediately stop using their Terminals and must remove such Terminals from the floor of the Exchange upon the termination of approval pursuant to this paragraph, and that nothing in this paragraph shall be construed as a waiver of or limitation upon whatever right Members may otherwise have to seek appropriate relief pursuant to PSE Rule 11 in the event the Exchange terminates approval of a Member's Terminal pursuant to this paragraph.[4]

Pilot Program

Finally, Paragraph 8 of the proposed policy states that the Pilot Program expires six months after its implementation, but may be renewed upon an Exchange filing with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

The Exchange notes that, except in certain minor respects, the proposed Policy is consistent with an approved rule change of the Chicago Board Options Exchange (''CBOE'') relating to the use of proprietary brokerage order routing terminals on the CBOE floor.[5]

Basis

The Exchange believes that proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act, in particular, in that it is designed to facilitate transactions in securities; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing with respect to transactions in securities; to promote just and equitable principles of trade; and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principle office of the PSE. All submissions should refer to File No. SR–PSE–97–02 and should be submitted by March 11, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–3915 Filed 2–14–97; 8:45 am]

**BILLING CODE 8010–01–M**

[4] PSE Rule 11.7 provides due process protections for persons who have been aggrieved by Exchange action. It gives such persons an opportunity to be heard and to have the complained of action reviewed by the Exchange.

[5] *See* Exchange Act Release No. 38054 (December 16, 1996), 61 FR 67365 (December 20, 1996).

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–38269; File No. SR–Phlx–96–41]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Designating Options as Tier I Securities

February 11, 1997.

On October 11, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] to include equity options, index options and other option like products issued, cleared and guaranteed by the Options Clearing Corporation (''OCC'') as Tier I securities under Exchange Rule 803. Notice of the proposed rule change, together with the substance of the proposal, was published in the Federal Register.[2] One comment letter was received on the proposal.[3] The Commission is approving the proposed rule change contingent upon NASAA's[4] amendment of the Phlx MOU to permit OCC issued options to be designated as Tier I securities.[5]

I. Background

In 1994, the Exchange adopted a two tier listing criteria program for equity and debt securities.[6] The Exchange originally adopted its Tier I listing standards based on standards established in a MOU between the NASAA and the Phlx. The Phlx MOU is modeled after the MOU between the

[1] 15 U.S.C. § 78s(b)(1).

[2] Securities Exchange Act Release No. 37914 (Nov. 1, 1996), 61 FR 57940 (Nov. 8, 1996).

[3] *See* Letter from Karen M. O'Brien, General Counsel, North American Securities Administrators Association, Inc. (''NASAA''), to Karl Varner, Division of Market Regulation, SEC, dated January 27, 1997, which indicated that OCC cleared options qualify for designation as Tier I securities under the NASAA Memorandum of Understanding (''MOU'') between NASAA and the Phlx. *But see infra* note 5.

[4] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

[5] NASAA plans to have its board ratify this amendment to the Phlx MOU at its February 21, 1997, board meeting. According to NASAA, because the Phlx MOU is a membership document, it cannot be revised until the members vote on this amendment during the April 1997, membership meeting. Telephone conversation between Karen O'Brien, General Counsel, NASAA, and Karl Varner, Attorney, Division of Market Regulation, SEC, on February 7, 1997.

[6] *See* Securities Exchange Act Release No. 34235 (June 17, 1994), 59 FR 32736 (June 24, 1994).

National Association of Securities Dealers (''NASD'') and NASAA,[7] which is entitled ''A Model Uniform Marketplace Exemption.''

In the order approving the Exchange's Tier I listing standards, the Commission noted that the Exchange was adopting the MOU standards in an effort to provide issuers whose securities were designated as Tier I a greater opportunity to obtain blue sky exemptions.[8] With the adoption of the MOU, the Exchange has received blue sky exemptions for its listed securities designated as Tier I from a number of states. When the Exchange adopted its two tiered listing standards, however, the Exchange did not include equity and index options as Tier I securities, and the Phlx MOU with NASAA did not designate such options as Tier I securities. The Exchange has explained that exclusion of options as Tier I securities was merely an oversight rather than an intentional exclusion because the Exchange's equity and debt security listing standards are provided in a separate rule from its option listing standards.[9]

The OCC, which is considered the issuer of all Phlx listed options, has the responsibility of registering these options. OCC has indicated to the Exchange that it must register Phlx listed options in numerous states in which the OCC would not otherwise be required to register if the options were able to take advantage of the blue sky exemptions accorded to the Phlx's Tier I securities. Thus, the Exchange proposes to include its equity options, index options and any other OCC issued, cleared and guaranteed products as Tier I securities for blue sky purposes. Under the proposal, options would still have to meet existing eligibility listing standards set forth in Phlx rules specifically for options.[10] Further, the Phlx and NASAA have agreed that OCC issued options may qualify for designation as Tier I securities and are in the process of amending the Phlx MOU to reflect this change.[11]

Discussion

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

The proposed rule change should facilitate transactions in securities and remove impediments to a free and open market by eliminating the need for OCC to register Phlx listed options in those states that currently grant a blue sky exemption to Phlx's Tier I securities. This rule change should help to eliminate some of the costs associated with listing options as well as making the process of listing options easier and quicker.

As discussed above, under the rule being approved herein, OCC cleared options will be designated as Tier I securities for blue sky purposes only. Accordingly, the rule change does not affect or change in any way the standards that must be met to initially, or continue to, list equity and index options or such other OCC issued options permitted under Phlx rules. In approving the Phlx's proposal, the Commission recognizes that the listing criteria set forth in Phlx Rules 803 through 805 for Tier I securities are for equity-type securities as opposed to options issued by the OCC. Nevertheless, because it is clear under Phlx's rule that listed options will still have to meet options listing criteria and that the Tier I designation for options is merely to eliminate the need to register such securities under certain state blue sky laws, we believe the change is appropriate and consistent with the Act.[12]

Finally, as noted above, in conjunction with this proposal, NASAA and Phlx have agreed that OCC issued options may be designated as Tier I securities for blue sky purposes,[13] and NASAA has represented to the Commission that the Phlx MOU will be amended as soon as practical to reflect this agreement.[14] Accordingly, this rule change will not become operative until NASAA amends the Phlx MOU to permit OCC issued options to be designated as Tier I securities.[15] This amendment would ensure that the MOU is consistent with Phlx rules designating OCC cleared options as Tier I securities, and that those states that grant Phlx a blue sky exemption based on the MOU will recognize such exemption for Phlx listed options. In addition, in its letter to the Commission, NASAA states that this approach is similar to the structure adopted in the MOU between the PSE and NASAA.[16]

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR–Phlx–96–41 be, and hereby is, approved contingent upon NASAA's amendment of the Phlx MOU to permit OCC issued options to be designated as Tier I securities.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–3916 Filed 2–14–97; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* Securities Act Release No. 6810 (Dec. 16, 1988), 53 FR 52550 (Dec. 28, 1988).

[8] *See supra* note 6 n. 12.

[9] *See* Rules Phlx 803 through 805 for equity and debt security listing standards; Phlx Rules 1009 and 1009A for listing applicable to options on equities and indexes respectively.

[10] *See supra* note 9.

[11] *See supra* notes 3 and 5. As discussed above, NASAA plans to revise the Phlx MOU. The Commission notes that this approval order is contingent on the NASAA's formal amendment of the Phlx MOU to permit OCC issued options to be designated as Tier I securities.

[12] The Commission notes that Phlx's proposed rule is almost identical to the Pacific Stock Exchange's (''PSE'') current rule designating PSE listed options as PSE Tier I securities for blue sky purposes.

[13] *See Supra* note 3.

[14] *See supra* notes 5 and 11.

[15] *Id.*

[16] *See supra* note 3.

[17] 17 CFR 200.30–3(a)(12).

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**[Release No. 34–38265; File No. SR–Phlx–96–23]**

## Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Options Specialist Evaluations.

February 11, 1997.

On July 1, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify its procedures for evaluating options specialists units. Notice of the proposal was published for comment and appeared in the Federal Register on September 12, 1996. The exchange subsequently filed Amendment No. 1 to the proposed rule change on December 2, 1996.[3] No comment letters were

[1] U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Phlx, to

Continued

received on the proposal. This order approves the Phlx proposal as amended.

I. Description of the Proposal

Since at least 1978, the Exchange has been evaluating its options specialists based on the same questionnaire in use today. Subjective series of questions answered by the floor brokers that have traded with the particular specialists over the last quarter. The results of the questionnaire are used by the Committee when making allocation and reallocation decisions regarding option specialist privileges. The Exchange has represented that the Committee's current review system is very complicated and needs to be simplified in order to be more effective. The evaluations are now scored on a scale of 1 through 10, and any unit with an overall score below 5 on the questionnaire in one quarter, a score of below 5 for three or more questions in one quarter, or a score below 5 on the same question for three consecutive quarters is deemed to have performed below minimum standards and is subject to review by the Committee.

The Phlx proposal, as amended, modifies the survey and revises the process by which the Committee uses the questionnaires to evaluate the specialists' performance.

*1. Survey Modification*

The survey is revised such as to request information that the Exchange believes would be more directly indicative of a specialist's performance. The new survey has 15 all-new questions. It would be answered every six months by floor brokers who would have traded at least a minimum number of times in the specialist's issues over the past six months.[4] Only specialist units (not individual specialists) would now be graded as allocations are made to units, not individual specialists; however, separate evaluations will be conducted for each quarter or half turret post at which a unit has a specialist operation. Thus, a large specialist unit which is spread out over the floor may receive two or three separate evaluation scores so that the Committee could focus on exactly where a problem may be occurring. The same questionnaire will be used for equity option specialists, index option specialists[5] and foreign currency option specialists.

Each question must be answered by giving the unit a score of 1 through 9 (very poor to excellent). Any question that is answered with a score of 4 or less must be accompanied by a written explanation. Floor brokers who submit negative comments about a particular specialist unit may, but are not required to, speak directly with a representative of the specialist unit in order to try to resolve any problems that may exist; Exchange staff may attend such a meeting. Floor brokers who do not complete and return the surveys will continue to be subject to fines pursuant to Options Floor Procedure Advice C–8.

The questions asked will cover a wide range of specialist responsibilities such as the degree of liquidity provided, the tightness of quotes, timeliness of quote updates, ability to fill small lot orders, timeliness of reports, ability to conduct opening rotations, maintenance of crowd control, and clerical staffing.

*2. Evaluation Procedure*

Under the proposed new language in Supplementary Material .02 to Rule 515, the Committee[6] would review the survey as well as regulatory history, written complaints, timeliness of openings, trading data, and any other relevant information in order to determine if minimum performance standards have been met in areas such as quality of markets, observance of ethical standards, and administrative responsibilities. If a specialist unit is ranked by score in the bottom 10% of all units as a result of a semi-annual review, it will be presumed to have failed to meet the minimum performance standards.[7] The Committee may also make such a presumption if the information on the survey or the other information reviewed by the Committee supports such a finding.

If the Committee makes such a presumption of failure to meet minimum performance standards, it may elect to hold an informal meeting with the specialist unit. If the unit refuses to meet without reasonable justification, or if the evaluation scores are not improved, the Committee may proceed with a formal hearing in accordance with Rule 511(e). The Committee may only impose sanctions such as removal of specialist privileges in one or more options classes or a prohibition from new allocations as the result of a formal hearing. The hearing procedures set forth in Rule 511(e) will not change as a result of this rule proposal and decisions will still be subject to appeal to the Board of Governors as provided for under By-Law Article XI, Section 11–1.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Sections 6(b)(5) in that it is designed to prevent fraudulent, manipulative acts and practices and to promote just and equitable principles of trade, and to remove impediments to and protect the mechanism of a free and open market and to protect investors and the public interest.

The Commission believes that the adoption of a new, expanded survey is a more precise measurement of specialist units' performance and will serve to enhance the options specialists evaluation procedures; these evaluation procedures are designed to help the Exchange maintain the quality and integrity of its markets by setting minimum standards of specialist performance and providing a means to identify specialist units which fail to meet minimum performance standards. Specifically, the evaluation procedures should further the Phlx's ability to ensure liquid and continuous markets for options by permitting the Exchange to enforce more effectively the affirmative and negative obligations imposed on specialist units.

The Commission also believes that the Committee's consideration of the floor broker survey results in allocating options to specialist units should provide an incentive for improved specialist performance.

Moreover, the Commission finds the Phlx's program is substantially similar to those of the Chicago Board Options Exchange ("CBOE")[8] and Pacific Stock Exchange ("PSE")[9] which have been in operation for several years. In particular, the Commission believes that the purposes for conducting the questionnaires will not be compromised

Jon Kroeper, Esquire, Office of Market Supervision, Division of Market Regulation, SEC, dated November 27, 1996. Amendment No. 1 amends Rule 511 to clarify that the Allocation, Evaluation, and Securities Committee ("Committee") has the authority to hold a hearing in the event that a registrant has failed to fulfill minimum performance standards, and to allow the Committee to take action against a registrant who does not attend a scheduled informal meeting or hearing.

[4] Floor brokers surveyed will be chosen according to Exchange records. The number of trades may vary but will be predetermined by the Committee.

[5] Currently, all of the specialist units that have been allocated index options are also equity option specialists; however, if a unit only traded index options, the survey would be equally applicable.

[6] The Committee may conduct such reviews or it may delegate that responsibility to the Quality of Markets Subcommittee. Exchange Rule 509 is being amended to note this function as a specific responsibility of this subcommittee.

[7] Under the current procedure, a specialist unit that receives an average score under 5.00 in any one quarter would be deemed to have performed below minimum standards.

[8] CBOE Rule 8.60.

[9] PSE Option Floor Procedure Advice B–13.

by distributing the questionnaires semi-annually instead of quarterly. The Commission notes that the CBOE and PSE also evaluate their trading crowds and market makers on a semi-annual basis.

Finally, the Commission believes that more stringent formalized specialist standards will further enhance the integrity of the options markets and contribute to investor confidence and protection.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment No. 1 made clarifying technical changes to the text of the rule, and did not propose new substantive provisions to the submitted rule change. Accordingly, the Commission believes that consistent with Sections 6(b)(5) and 19(b)(2) of the Act, good cause exists to accelerate approval of Amendment No. 1.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–96–23 and should be submitted by March 11, 1997.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act[10] that the proposed rule change (SR–Phlx–96–23), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–3919 Filed 2–14–97; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

**[Public Notice No. 2509]**

### Shipping Coordinating Committee, Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on Tuesday, March 4, 1997, at 9:30 a.m. in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the thirty-ninth session of the Marine Environment Protection Committee (MEPC 39) of the International Maritime Organization (IMO) to be held from March 10–14, 1997. Proposed U.S. positions on the agenda items for MEPC will be discussed.

The major items for discussion will be the following:

a. Development of a draft protocol to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, to include Annex VI (Air Pollution) regulations.

b. Work relating to the human element.

c. Harmful aquatic organisms in ballast water.

d. Identification and protection of Special Areas and particularly sensitive sea areas.

e. Implementation of the Oil Pollution Preparedness, Response, and Co-operation (OPRC) Convention and Oil Pollution Preparedness Response Conference resolution, including expansion of the OPRC Convention to include Hazardous Substances.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information or documentation pertaining to the SPMP meeting, contact Ensign Lamont Bazemore, U.S. Coast Guard Headquarters (G–MSO–4), 2100 Second Street, SW. Washington, DC 20593–0001; Telephone: (202) 267–0713.

Dated: January 30, 1997.

Russell A. LaMantia,

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 97–3831 Filed 2–14–97; 8:45 am]

BILLING CODE 4710–07–M

## TENNESSEE VALLEY AUTHORITY

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Tennessee Valley Authority (Meeting No. 1492).

**TIME AND DATE:** 10 a.m. (CST), February 19, 1997.

**PLACE:** Bevill Conference Center & Hotel, Room 267, 550 Sparkman Drive, Huntsville, Alabama.

**STATUS:** Open.

Agenda

Approval of minutes of meeting held on January 29, 1997.

*New Business*

C—Energy

C1. Approval for TVA Nuclear to enter into a labor and services contract with ABB Combustion Engineering, subject to final negotiation, to provide professional support and equipment, as needed, for ultrasonic and eddy current nondestructive examination services at TVA's nuclear plants.

C2. Approval for Transmission/Power Supply to enter into contracts with Mesa Associates, Inc., and Sargent & Lundy LLC, subject to final negotiation, to provide engineering and design services for TVA's generating plant switchyards, electrical transmission system, and power control communication facilities.

C3. Approval for Transmission/Power Supply to enter into a fixed unit-price requirements contract with Valmont Industries Inc., subject to final negotiation, to provide transmission steel poles and climbing steps.

E—Real Property Transactions

E1. Land Exchange by the U.S. Department of Agriculture, Forest Service, of approximately 14 acres of former TVA land on Watauga Lake in Carter County, Tennessee (Tract No. XTWAR–30), for 120 acres of private land of equal value.

E2. Modification of condition and covenant contained in a transfer instrument affecting approximately 44 acres of former TVA land on Guntersville Lake, Marshall County, Alabama (Tract No. XTGR–104), to allow the City of Scottsboro to license or lease the tract to private developers for construction and operation of recreational facilities.

Unclassified

F1. Filing of condemnation cases.

Information Items

1. Approval of an operating agreement for Integrated Hydroelectric Machine Condition Monitoring Consortium, LLC.

2. Filing of condemnation cases.

3. New investment managers and proposed new Investment Management Agreements between the TVA Retirement System and State Street Bank and Trust Company and Rowe-price Fleming International, Inc.

4. Extension of teaming agreement (Contract No. TV–94218V) with Team Associates, Inc.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: February 12, 1997.

William L. Osteen,

*Associate General Counsel and Assistant Secretary.*

[FR Doc. 97–4011 Filed 2–13–97; 12:49 pm]

**BILLING CODE 8120–08–M**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[CGD 97–003]**

### Additional Hazards Study

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** This notice announces the initiation of a study that will evaluate the hazards related to potential oil spills by commercial ships while in transit. This study is being completed by the Volpe National Transportation Systems Center on behalf of the U.S. Coast Guard and Department of Transportation (DOT) pursuant to the Presidential Directive to the Secretary to review overall marine safety in the waters in and around Puget Sound. This notice also solicits public comments on the proposed study and invites qualified personnel to apply for membership on an expert panel. Two public workshops will also be held to gather information from stakeholders on possible problems and solutions.

**DATES:** The following dates apply:

1. Duplicate public workshops will be held on March 6, 1997, from 8:30 a.m. to 12:30 p.m. and 5:30 p.m. to 9:30 p.m.

2. Submit comments concerning this notice on or before March 14, 1997.

3. Submit applications for membership on the expert panel on or before February 26, 1997.

**ADDRESSES:** The following addresses apply:

1. The workshops will be held at the Cavanaugh's Inn on Fifth Avenue, 1415 Fifth Ave., Seattle, WA 98101.

2. Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) [CGD 97–003], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this project. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

3. Applications for membership on the expert panel should be submitted to Mr. Mike Dyer, Volpe Center/DTS–72, Kendall Square, Cambridge, MA 02142–1093, or faxed to (617) 494–3066.

**FOR FURTHER INFORMATION CONTACT:** LT Duane Boniface, Human Element and Ship Design Division (G–MSE–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone 202–267–0178, fax 202–267–4816, email fldr-he@comdt.uscg.mil.

**SUPPLEMENTARY INFORMATION:**

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments, concerning the subject matter of this notice. Persons submitting comments should include their names and addresses, identify this docket (CGD 97–003), and give the reason for each comment, providing specific examples whenever possible. Please submit two copies of all comments and attachments in an unbound format, no longer than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Qualifications Necessary for Membership on the Expert Panel

Applicants for membership on the expert panel must have at least ten years of experience in the field that they represent and be available to attend a workshop in the Seattle area for three days during the first week of April 1997. Additionally, experts must be available to participate in correspondence sessions before and after the expert panel workshop in order to provide insight and guidance. The fields of expertise requested are: marine and coastal environments; shipping operations and safety; risk assessment; pilotage; navigation of the waters in and around Pugent Sound; response planning and capabilities; assistance towing; macro-ergonomics; and fisheries. To be considered, applicants should forward a resume by mail or fax to the address for applications listed under **ADDRESSES.**

Background and Purpose

The Volpe National Transportation Systems Center (Volpe) is performing a study entitled ''The Additional Hazards Study'' on behalf of the U.S. Coast Guard and Department of Transportation in accordance with a Presidential Directive issued in 1996. This study will evaluate all measures, current and planned, intended to reduce the hazards of major oil spills (including crude oil, refined product, and bunker) by commercial ships while transiting the waters of Pugent Sound, the Straits of Juan de Fuca, and the Olympic Coast National Marine Sanctuary. An example of one of these measures is the planned International Tug of Opportunity System (ITOS), which is a system designed to coordinate tugs responding to disabled vessels off the Olympic Coast.

This study represents another step in a continuous improvement process to address maritime concerns in the Pacific Northwest. Development of this project began in early December 1996, and is intended to be completed during the summer of 1997. It is critical that all marine interests in the Pacific Northwest be accurately represented; therefore, stakeholders representing various concerns have been, and are being, contacted.

There are four primary stages comprising this study which must be completed before the deadline. The first three stages primarily involve collection of information and include analysis of data from the pertinent databases, review of the current and planned marine safety and environmental protection (MSEP) system, and acquisition of stakeholder input on the hazards and potential improvements through comments and participation in public workshops. Although representatives of Volpe are ultimately responsible for the collection and analysis of this information, Volpe will use a panel of experts to assist them with their analysis. This panel of experts will compile the information obtained in the first three stages into a list of hazards, ranked by level of risk, and measures which may mitigate those hazards.

Volpe's final report will include a list of hazards, ranked by level of risk, and a corresponding listing of measures which might mitigate those hazards. The report will be used as a basis to

focus further review of marine safety measures for the Pugent Sound area.

Dated: February 11, 1997.

Joseph J. Angelo,

*Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 97–3997 Filed 2–13–97; 9:56 am]

**BILLING CODE 4910–14–M**

## National Highway Traffic Safety Administration

## Research and Development Programs Meeting

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects. Further, the notice requests suggestions for topics to be presented by the agency.

**DATES AND TIMES:** The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on March 11, 1997, beginning at 1:30 p.m. and ending at approximately 5 p.m. The deadline for interested parties to suggest agenda topics is 4:15 p.m. on February 21, 1997. Questions may be submitted in advance regarding the agency's research and development projects. They must be submitted in writing by February 27, 1997, to the address given below. If sufficient time is available, questions received after the February 27 date will be answered at the meeting in the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by February 27 will be available at the meeting and will be mailed to requesters after the meeting.

**ADDRESSES:** The meeting will be held at the Hilton Suites, Detroit Metro Airport, 8600 Wickham Road, Romulus, Michigan 48174. Suggestions for specific R&D topics as described below and questions for the March 11, 1997, meeting relating to the agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh St., SW., Washington, DC 20590. The fax number is 202–366–5930.

**SUPPLEMENTARY INFORMATION:** NHTSA intends to provide detailed presentations about its research and development programs in a series of public meetings. The series started in April 1993. The purpose is to make available more complete and timely information regarding the agency's research and development programs. This sixteenth meeting in the series will be held on March 11, 1997.

NHTSA requests suggestions from interested parties on the specific agenda topics to be presented. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by close of business at 4:15 p.m. on February 21, 1997. Before the meeting, it will publish a notice with an agenda listing the research and development topics to be discussed. The agenda can also be obtained by calling or faxing the information numbers listed elsewhere in this notice. NHTSA asks that the suggestions be limited to six, in priority order, so that the presentations at the March 11 R&D meeting can be most useful to the audience. Specific R&D topics are listed below. Many of these topics have been discussed at previous meetings. Suggestions for agenda topics are not restricted to this listing, and interested parties are invited to suggest other R&D topics of specific interest to their organizations.

Specific R&D topics are:

On-line tracking system for NHTSA's research projects, and Crash Injury Research and Engineering Network (CIREN).

Specific Crashworthiness R&D topics are:

Status of air bag aggressiveness and advanced air bag research, Demonstration of CD ROM for child restraint/vehicle compatibility, Preparation of new dummies for assessment of advanced air bag technology, Status of research on restraint systems for rollover protection, Improved frontal crash protection (program status, problem identification, offset testing),

Advanced glazing research, Vehicle aggressivity and fleet compatibility, Upgrade side crash protection, Upgrade seat and occupant restraint systems, Child safety research (ISOFIX), Child restraint/air bag interaction (CRABI) dummy testing, Truck crashworthiness/occupant protection, National Transportation Biomechanics Research Center (NTBRC), Head and neck injury research, Lower extremity injury research, Thorax injury research, Human injury simulation and analysis, Refinements to the Hybrid III dummy, and Advanced frontal test dummy.

Specific Crash Avoidance R&D topics are:

Strategic plan for NHTSA's Intelligent Transportation Systems (ITS) crash avoidance research, Status and plans for anti-lock brake system (ABS) research, Truck tire traction, Portable data acquisition system for crash avoidance research (DASCAR), Systems to enhance EMS response (automatic collision notification), Crash causal analysis, Human factors guidelines for crash avoidance warning devices, Longer combination vehicle safety, Drowsy driver monitoring, Driver workload assessment, Pedestrian detection devices for school bus safety, Preliminary rearend collision avoidance system guidelines, Preliminary road departure collision avoidance system guidelines, Preliminary intersection collision avoidance system guidelines, and Preliminary lane change/merge collision avoidance system guidelines.

National Center for Statistics and Analysis (NCSA) topic is:

Special crash investigation studies of air bag cases.

Separately, questions regarding research projects that have been submitted in writing not later than close of business on February 27, 1997, will be answered. A transcript of the meeting, copies of materials handed out at the meeting, and copies of the suggestions offered by commenters will be available for public inspection in the NHTSA's Technical Reference Division, Room 5108, 400 Seventh St., SW., Washington, DC 20590. Copies of the transcript will then be available at 10 cents a page, upon request to NHTSA's Technical Reference Division. The Technical Reference Division is open to the public from 9:30 a.m. to 4 p.m.

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of ''auxiliary aids'' (e.g., sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons on 202–366–4862 by close of business March 5, 1997.

**FOR FURTHER INFORMATION CONTACT:** Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, SW., Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: February 11, 1997.

Ralph J. Hitchcock,

*Acting Associate Administrator for Research and Development.*

[FR Doc. 97–3907 Filed 2–14–97; 8:45 am]

**BILLING CODE 4910–59–P**

## Surface Transportation Board

**[STB Ex Parte No. 290 (Sub No. 4)]**

### Railroad Cost Recovery Procedures-Productivity Adjustment

**AGENCY:** Surface Transportation Board.

**ACTION:** Proposed adoption of a railroad cost recovery procedures productivity adjustment.

**SUMMARY:** The Surface Transportation Board proposes to adopt 1.050 (5.0%) as the measure of average growth in railroad productivity for the 1991–1995 (5-year) period. The current value of 5.9% was developed for the 1990 to 1994 period.

**DATES:** Comments are due by March 5, 1997.

**EFFECTIVE DATE:** The proposed productivity adjustment is effective 30 days after the date of service.

**ADDRESSES:** Office of the Secretary, Case Control Branch, Surface Transportation Board, Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:** H. Jeff Warren, (202) 927–6243. TDD for the hearing impaired: (202) 927–5721.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To purchase a copy of the full decision write to, call, or pick up in person from: DC NEWS & DATA, INC., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423, telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: February 6, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

*Secretary.*

[FR Doc. 97–3933 Filed 2–14–97; 8:45 am]

**BILLING CODE 4915–00–P**

**[STB Finance Docket No. 33347]** [1]

### Union Pacific Railroad Company—Trackage Rights Exemption—Elgin, Joliet and Eastern Railway Company

Elgin, Joliet and Eastern Railway Company has agreed to grant overhead trackage rights to Union Pacific Railroad Company (Union Pacific) over 11 miles of rail line between milepost 25.2 near Chicago Heights, IL, and milepost 36.2 near Griffith, IN. The transaction was expected to be consummated on, or as soon as possible after, January 31, 1997.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33347, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423 and served on: Joseph D. Anthofer, General Attorney, 1416 Dodge Street, #830, Omaha, NE 68179.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: February 10, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

*Secretary.*

[FR Doc. 97–3934 Filed 2–14–97; 8:45 am]

**BILLING CODE 4915–00–P**

[1] On January 28, 1997, Joseph C. Szabo, on behalf of the United Transportation Union-Illinois Legislative Board, filed a petition to reject this notice of exemption and for stay of the effectiveness of the exemption. Union Pacific replied on January 30, 1997. The petition will be considered by the entire Board in a separate decision.

## DEPARTMENT OF THE TREASURY

## Fiscal Service

**[Dept. Circ. 570, 1996 Rev., Supp. No. 6]**

### Surety Companies Acceptable on Federal Bonds; Consolidated Insurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1996 Revision, on page 34288 to reflect this addition:

*Consolidated Insurance Company.* Business Address: 62 Maple Avenue, Keene, NH 03431. Phone: (603) 352–3221. Underwriting Limitation *b*/: $1,960.000. Surety Licenses *c*/: FL, IL, IN, IA, KY, MI, OH, TN, WA, WI. Incorporated IN: Indiana.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.fmd.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 8734–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00499–7.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–6905.

Dated: February 4, 1997.

Charles F. Schwan III,

*Director, Funds Management Division, Financial Management Service.*

[FR Doc. 97–3905 Filed 2–14–97; 8:45 am]

**BILLING CODE 4810–35–M**

**[Dept. Circ. 570, 1996 Rev., Supp. No. 7]**

### Surety Companies Acceptable on Federal Bonds; Excelsior Insurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1996 Revision, on page 34290 to reflect this addition:

*Excelsior Insurance Company.* Business Address: 62 Maple Avenue, Keene, NH 03432. Phone: (603) 352–3221. Underwriting Limitation *b*/: $2,349,000. Surety Licenses *c*/: CT, DE, DC, FL, GA, IN, KY, ME, MD, NH, NJ, NY, NC, PA, VA. Incorporated in: New Hampshire.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as

the companies remain qualified (31 CFR, part 223), A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570.htm1) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00499–7.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–6905.

Dated: February 4, 1997.

Charles F. Schwan III,

*Director, Funds Management Division, Financial Management Service.*

[FR Doc. 97–3903 Filed 2–14–97; 8:45 am]

**BILLING CODE 4810–35–M**

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**[Dept. Circ. 570, 1996 Rev., Supp. No. 8]**

## Surety Companies Acceptable on Federal Bonds; Indiana Insurance Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the Untied States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1996 Revision, on page 34296 to reflect this addition:

*Indiana Insurance Company.* Business Address: 62 Maple Avenue, Keene, NH 03431. Phone: (603) 352–3221. Underwriting Limitation *b*/: $8,992,000. Surety Licenses *c*/: FL, IL, IN, IA, KY, MI, OH, TN, WA, WI. Incorporated IN: Indiana.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://www.fmd.treas.gov/c570.html) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchasing from the Government Printing Office (GPO), Subscription Service Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00499–7.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782, telephone (202) 874–6850.

Dated: February 4, 1997.

Charles F. Schwan III,

*Director, Funds Management Division, Financial Management Service.*

[FR Doc. 97–3904 Filed 2–14–97; 8:45 am]

**BILLING CODE 4810–35–M**

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## Internal Revenue Service

**[PS–92–90]**

## Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–92–90 (TD 8395), Special Valuation Rules (§§ 25.2701–2, 25.2701–4, and 301.6501(c)–1).

**DATES:** Written comments should be received on or before April 21, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Special Valuation Rules.

*OMB Number:* 1545–1241.

*Regulation Project Number:* PS–92–90.

*Abstract:* Section 2701 of the Internal Revenue Code allows various elections by family members who make gifts of common stock or partnership interests and retain senior interests in the same entity. This regulation provides guidance on how taxpayers make these elections, what information is required, and how the transfer is to be disclosed on the gift tax return (Form 709).

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of OMB approval.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 1,200.

*Estimated Time Per Respondent:* 25 minutes.

*Estimated Total Annual Burden Hours:* 496.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97–3947 Filed 2–14–97; 8:45 am]

BILLING CODE 4830–01–U

**[FI–34–91]**

## Proposed Collection; Comment Request For Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–34–91 (TD 8396), Conclusive Presumption of Worthlessness of Debts Held by Banks (§ 1.166–2).

**DATES:** Written comments should be received on or before April 21, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Conclusive Presumption of Worthlessness of Debts Held by Banks.

*OMB Number:* 1545–1254.

*Regulation Project Number:* FI–34–91.

*Abstract:* Section 1.166–2(d)(3) of this regulation allows a bank to elect to determine the worthlessness of debts by using a method of accounting that conforms worthlessness for tax purposes to worthlessness for regulatory purposes, and establish a conclusive presumption of worthlessness. An election under this regulation is treated as a change in accounting method.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of OMB approval.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 200.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97–3948 Filed 2–14–97; 8:45 am]

BILLING CODE 4830–01–U

**[INTL–21–91]**

## Proposed Collection; Comment Request For Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing temporary and final regulation, INTL–21–91 (TD 8656), Section 6662—Imposition of the Accuracy-Related Penalty (§ 1.6662–6).

**DATES:** Written comments should be received on or before April 21, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Section 6662—Imposition of the Accuracy-Related Penalty.

*OMB Number:* 1545–1426.

*Regulation Project Number:* INTL–21–91.

*Abstract:* These regulations provide guidance on the accuracy-related penalty imposed on underpayments of tax caused by substantial and gross valuation misstatements as defined in Internal Revenue Code sections 6662(e) and 6662(h). Under section 1.6662–6(d) of the regulations, an amount is excluded from the penalty if certain requirements are met and a taxpayer maintains documentation of how a transfer price was determined for a transaction subject to Code section 482.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of OMB approval.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 2,500.

*Estimated Time Per Respondent:* 8 hours, 3 minutes.

*Estimated Total Annual Burden Hours:* 20,125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 11, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97–3949 Filed 2–14–97; 8:45 am]

BILLING CODE 4830–01–U

# Corrections

Federal Register
Vol. 62, No. 32
Tuesday, February 18, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Part 250

**RIN 1010-AB99**

### Training of Lessee and Contractor Employees Engaged in Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)

*Correction*

In rule document 97–2721 beginning on page 5320, in the issue of Wednesday, February 5, 1997, make the following corrections:

1. On page 5320, in the third column, the subagency name was inadvertently omitted and should read as set forth in the heading.

2. On the same page, in the same column, in the SUMMARY, in the first line, ''Their'' should read ''This''.

3. On page 5321, in the third column, in the last line, ''environment,'' should read ''environment;''.

**§ 250.214 [Corrected]**

4. On page 5324, both the ''Well Control Transition'' table and the ''Production Transition'' table should read as set forth below:

WELL CONTROL TRANSITION

| If your employees | Then the employees must |
|---|---|
| A. Completed a basic course on or after March 7, 1996 or | A. Complete an appropriate basic course within 2 years to maintain certification,[1] or |
| B. Completed a basic course before March 7, 1996. | B. Complete an appropriate basic course by March 9, 1998.[2] |

[1] Example A: If the effective date of this regulation is November 1, 1996, and your employees completed a basic course in Drilling and Workover/Completion well control on December 9, 1995, your employees must complete a basic Drilling and Workover/Completion well-control course by December 9, 1997.

[2] Example B: If the effective date of this regulation is November 1, 1996, and your employees completed a basic course in Well Servicing [snubbing option] well control on November 15, 1994, your employees must complete a basic course in Well Servicing [snubbing option] by November 1, 1997.

PRODUCTION TRANSITION

| If your employees | Then your employees must |
|---|---|
| A. Completed a basic course on or after September 7, 1995, or | A. Complete a basic course within 3 years to maintain certification, or |
| B. Completed a basic course before September 7, 1995 | B. Complete a basic course by September 7, 1998. |

**§ 250.228 [Corrected]**

5. On page 5326, in the second column, in § 250.228(a)(4)(i), in the second line, ''three'' should read ''tree''.

6. On the same page, in the same column, in § 250.228(a)(4)(iii), ''recognizes'' should read ''recognize'' and ''sings'' should read ''signs''.

**§ 250.229 [Corrected]**

7. On the same page, in the ''Well Control'' table, in the third line, ''vales'' should read ''valves''.

8. On page 5328, in the same table, in entry 33., in the 6th line, ''hosit'' should read ''hoist''.

9. On the same page, in the same table, in the same entry, in the 12th line, ''fulid'' should read ''fluid''.

**BILLING CODE 1505-01-D**

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 293, 351, 430, and 531

**RIN 3206–AH32**

### Reduction in Force and Performance Management

*Correction*

In proposed rule document 97–2686, beginning on page 5174, in the issue of Tuesday, February 4, 1997, make the following correction:

**§ 293.404 [Corrected]**

On page 5178, in the third column, in the last line, ''generally records'' should read ''generally not permanent records''.

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 119

**[Docket No. 28154; Notice No. 97-1]**

**RIN 2120-AG26**

## Operating Requirements: Domestic, Flag, Supplemental, Commuter, and On-Demand Operations: Editorial and Other Changes

*Correction*

In proposed rule document 97–2024 beginning on page 5076 in the issue of Monday, February 3, 1997 make the following correction:

**§ 119.5 [Corrected]**

On page 5086, in the third column, the section heading number should read as set forth above.

BILLING CODE 1505-01-D

Federal Register

Tuesday
February 18, 1997

# Part II

# Department of the Interior

## Fish and Wildlife Service

**50 CFR Part 18**

**Importation of Polar Bear Trophies From Canada Under the 1994 Amendments to the Marine Mammal Protection Act; Final Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 18**

**RIN 1018–AD04**

## Importation of Polar Bear Trophies From Canada Under the 1994 Amendments to the Marine Mammal Protection Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) establishes application requirements, permit procedures, and a fee for the issuance of permits to import trophies of polar bears (*Ursus maritimus*) sport hunted in Canada, including bears taken before the enactment of the 1994 Amendments.

The Northwest Territories (NWT) is the only area in Canada that currently allows sport hunting. The Service finds that the NWT polar bear management program meets the general criteria in the Marine Mammal Protection Act (MMPA) and approves specific populations when provisions are in place to be consistent with the International Agreement on the Conservation of Polar Bears (International Agreement) and ensure the maintenance of the affected population at a sustainable level. The Service intends these findings to be effective for multiple sport-hunting seasons pending review as required under the MMPA.

**DATES:** This rule is effective March 20, 1997.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Stansell, Office of Management Authority, 4401 N. Fairfax Drive, Arlington, Virginia 22203, telephone (703) 358–2093; fax (703) 358–2281.

**SUPPLEMENTARY INFORMATION:** On April 30, 1994, Congress amended the MMPA to allow for the issuance of permits to import sport-hunted trophies of polar bears legally taken by the applicant while hunting in Canada. At the present time, Canada is the only country that allows non-residents to harvest polar bears through a regulated sport-hunting program. Prior to the 1994 Amendments, the MMPA required those seeking authority to import polar bear trophies from Canada to obtain a waiver of the MMPA's moratorium on importing marine mammals. The Amendments provide for development of regulations to authorize the import of sport-hunted trophies by permit.

This final rule establishes the application requirements, permit procedures, issuance criteria, permit conditions, and issuance fee for such permits and makes the legal and scientific findings required by the MMPA. Under section 104(c)(5)(A) of the MMPA, before issuing a permit for the import of a polar bear trophy, the Service must make a finding that the applicant legally took the polar bear while hunting in Canada. In consultation with the Marine Mammal Commission (MMC) and after opportunity for public comment, the Service also must make the following findings: (A) Canada has a monitored and enforced sport-hunting program that is consistent with the International Agreement; (B) Canada has a sport-hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level; (C) the export from Canada and subsequent import into the United States are consistent with the provisions of the Convention on International Trade in Endangered Species (CITES) and other international agreements or conventions; and (D) the export and subsequent import are not likely to contribute to the illegal trade in bear parts.

According to the Committee Report (H.R. Rep. No. 439, 103d Cong., 2d Sess. (1994)), Congress placed these provisions in the law partly to ensure that the import of polar bear trophies into the United States would not increase hunting demand in Canada that would result in unsustainable harvest levels. The Committee believed Canada's polar bear management program regulates harvest through a quota system based on principles of sustainable yield and Canada would base any increase in the harvest quota on scientific data showing the population had increased to such an extent as to support an increase in the quota.

This final rule provides information on polar bear biology and Canada's management program for this species. The Service discusses each of the legal and scientific findings for the NWT in relation to the information provided and made these findings in consultation with the MMC and after notice and opportunity for public comment.

The Service consulted with the Canadian wildlife authorities to gather information on Canada's program. Based on the best available scientific information on polar bear populations in Canada and current information on Canada's management program, the Service believes its findings are consistent with section 104(c)(5)(A) of the MMPA.

### Application Procedures

Section 18.30 establishes the application requirements, permit procedures, issuance criteria, permit conditions, and fees to allow for the importation of polar bear trophies. The applicant also must meet the applicable requirements in 50 CFR Parts 13 (General permit procedures), 14 (Importation, exportation, and transportation of wildlife), 18 (Marine mammals), and 23 (Endangered species convention (CITES)). Thus, for example, all sport-hunted polar bear import permits will be subject to the conditions of the new § 18.30(e), as well as the prohibitions of § 18.12(c)(1) and (2) regarding the import of pregnant or nursing marine mammals.

To ensure the requirements are met, the sport hunter must submit an application to the Service's Office of Management Authority. The application form will outline the general information needed for permit processing and information specific to the import of a trophy of a polar bear taken in Canada. This includes information indicating that the applicant legally hunted the bear, the sex of the bear, and an itemized description of the polar bear parts to be imported (e.g., one female polar bear trophy consisting of a tanned hide, 2.5 m head to tail length, with claws attached and skull). Inheritors of trophies taken by a hunter who died prior to import of the trophy must provide documentation to show that he or she is the lawful heir.

The Service recognizes that some applicants may wish to apply for an import permit prior to sport hunting. The Service will accept such applications for processing but will not issue a permit until the applicant submits the permit issuance fee of $1,000 and any information that may not have been known at the time of application, i.e., an itemized description of the polar bear parts, sex of the polar bear, information indicating that the applicant legally harvested the bear, certification that the bear was not pregnant or nursing (i.e., in a family group) or a bear constructing or in a den at the time of take, documentation to confirm the bear was not pregnant at the time of take, and any available documentation to indicate the bear was not taken while part of a family group.

### Definitions

The definitions in Parts 10, 18, and 23 of 50 CFR apply to this section.

The Service defined the term ''sport-hunted trophy'' to specify what parts of the polar bear are included in the term

and to stipulate that the permittee may only import such items for personal, noncommercial use. The Service considered the House Committee Report (H.R. Rep. No. 439, 103d Cong., 2d Sess. (1994)) in developing the definition. The report states that ''Trophies normally constitute the hide, hair, skull, teeth, and claws of the animal, that can be used by a taxidermist to create a mount of the animal for display or tanned for use as a rug. This provision does not allow the importation of any internal organ of the animal, including the gall bladder.''

The definition in this rule includes parts that are traditionally considered trophy items for personal display and excludes items such as clothing and jewelry. Since the definition includes skull, teeth, bones, and baculum (penis bone), the Service points out that these items must be marked in accordance with marking requirements for loose parts under the laws and regulations of Canada and the United States (§ 18.30(e)(7)).

The terms and conditions of the import permit govern the subsequent use of the trophy, outlining that even after import the permittee may only alter and use the trophy in a manner consistent with the definition of a sport-hunted trophy.

The Service defined the term ''management agreement'' for the purposes of this rule to mean a written agreement between parties that share a polar bear population which describes what portion of the harvestable quota will be allocated to each party and other measures that may be taken for the conservation of the population, such as harvest seasons, sex ratio of the harvest, and protection of females and/or cubs.

Review by the Marine Mammal Commission

The MMPA requires the Service to make the specific findings outlined in section 104(c)(5)(A) in consultation with the MMC, an independent Federal agency with statutory authority to make recommendations pursuant to Title II of the Act. On November 9, 1995, the MMC, in consultation with its Committee of Scientific Advisors, provided the Service substantive comments on the proposed rules. The Service carefully evaluated this advice, clarified some information with the Canadian Wildlife Service (CWS) based on the advice, and considered the information in making the decisions in this final rule.

Procedures for Issuance of Permits and Modification, Suspension, or Revocation of Permits

The general procedures to be followed for issuance, modification, suspension, or revocation of permits are set forth in 50 CFR Part 13 and 18.33. Section 18.33 outlines the application procedures required by section 104(d) of the MMPA. When Congress added section 104(c)(5) to the MMPA to allow for issuance of permits to import polar bear trophies, they did not exempt polar bear applications from the procedures in section 104(d) that require the Service to publish a notice of each permit application in the Federal Register for a 30-day public comment period.

Issuance Criteria

Before the Service can issue a permit, the Service must consider the issuance criteria of this section in addition to the general criteria in 50 CFR 13.21. The first issuance criterion provides that the specimen is ineligible for a permit if the applicant already imported it into the United States without a permit or if the Federal government seized it for illegal import.

The second and third issuance criteria specify what parts qualify under the definition as a sport-hunted trophy and stipulate who can be the applicant. The floor debate in the House of Representatives (140 Cong. Rec. H2725, April 26, 1994) emphasized that the intent of Congress was to limit import of polar bear trophies to the hunter who actually took the polar bear and who desires to import the trophy. If an individual who legally took a polar bear dies prior to the import, however, the heirs of that person's estate could apply for an import permit.

The Service took the next issuance criteria directly from the language of the law at section 104(c)(5)(A)(I)–(iv) and addresses determinations in regard to these criteria in the section on legal and scientific findings.

Permit Conditions

The general permit conditions in Part 13 of this subchapter apply. In addition, every permit issued is subject to the conditions currently in the regulations for marine mammal permits at § 18.31(d). These conditions require the permittee or an agent to possess the original permit at the time of import and to ensure a duplicate copy of the permit is attached to the container that holds the polar bear specimen while in storage or transit.

This rule adds eight conditions that help the Service make the legal and scientific findings required by the MMPA. These conditions specify that the permittee: may not import internal organs of the polar bear; may not alter and use the trophy except in a manner consistent with the definition of a sport-hunted polar bear trophy even after importing the trophy; may not import a polar bear that was a nursing bear or a female with such a bear (i.e., in a family group), a bear in a den or moving into a den, or a pregnant female, at the time of take; must ensure the import of a trophy is accompanied by a CITES export permit or re-export certificate; must import the trophy through a designated port, except for full mounts when accompanied with an exception to designated port permit; must import all parts of the trophy at the same time; must ensure the hide is permanently tagged and parts marked; and if the tag is lost, must present the trophy to the Service for retagging in a timely manner.

Duration of Permits

The Service designates the duration of the permit on the face of the permit. Permits for the import of sport-hunted polar bear trophies will be valid for no longer than one year, a timeframe that should allow for the import to occur.

Fees

The MMPA requires the Director to establish and charge a reasonable issuance fee for polar bear trophy import permits. The Service can issue the permit only after the applicant has paid the issuance fee which is due upon notice that the Service has approved the application. The issuance fee is in addition to the standard permit processing fee of $25 that is required at the time of application in accordance with 50 CFR 13.11(d).

The Service set the issuance fee at $1,000. The Committee Report outlined that the Committee considered a reasonable fee to range from $250 to $1,000. The Service believes this level of fee is appropriate given the use of such funds for polar bear conservation.

The MMPA further requires the Service to use all of the issuance fee for polar bear conservation programs conducted in Alaska and Russia under section 113(d) of the MMPA. The United States has concern for polar bear conservation worldwide, as shown by adoption of the International Agreement. The population shared between Alaska and Russia is of particular concern in light of renewed interest in polar bear hunting in Russia and the need for a well monitored and enforced conservation program in that country.

Scientific Review

The MMPA required the Service to undertake a scientific review of the impact of the issuance of import permits on the polar bear populations in Canada within 2 years from the enactment of the MMPA, that was by April 30, 1996. Due to the time it has taken to develop the final rule, the Service is setting the timeframe for this review as 2 years from the effective date of the final rule.

The review provides for the monitoring of the effects of permit issuance on Canada's polar bear populations and a means to guarantee the cessation of imports should there be an indication of a significant adverse impact on the sustainability of the Canadian populations. The Service is not defining the phrase ''significant adverse impact'' at this time but considers the intent of the 1994 Amendments was to require the Service not to issue trophy permits if the issuance of such permits was negatively affecting the sustainability of Canada's polar bear populations. Congressman Jack Fields, during the House of Representatives floor debate on the 1994 Amendments stated, ''A significant adverse impact means more than a simple decrease, ordinary fluctuation, or normal change in the population cycle. A decline should not be considered significant if the decline is of short duration, affects a minuscule percentage of the population, or does not jeopardize the sustainability of the species in the long term. The decrease must be proven to be directly related to the trophy imports by sport hunters and of such a magnitude as to warrant suspension of those imports. Even so, the issuance of permits should not be suspended unless Canada does not reduce the harvest quota in response to this decline.'' (140 Cong. Rec. H2725. April 26, 1994)

The MMPA requires the Service to base the review on the best scientific information available and solicit public comment. The final report must include a response to such public comment. The Director must not issue permits allowing for the import of polar bears taken in Canada if the Service determines, based on such review, that the issuance of permits is having a significant adverse impact on the polar bear populations in Canada.

Following the mandatory review of the impact of the issuance of permits on Canadian polar bear populations, the Director may conduct subsequent annual reviews. If the Director does undertake a review, the MMPI requires that the Service complete the review by January 31. The Director may not refuse to issue permits solely on the basis that the Service did not complete the review by January 31. However, the Director may refuse to issue permits if the Service cannot make the legal and scientific findings as described below.

Consideration of Population Stocks Under the MMPI

The language in the MMPI refers to both an ''affected population stock'' and ''affected population stocks,'' raising the question of whether the Service needs to make the findings on one population for the whole of Canada or on each of the 12 identified population stocks. Canada's polar bears have alternatively been described in terms of management units, subpopulations, or populations. Discussions of polar bears frequently use inconsistent terms. For example, one summary at the Polar Bear Specialist Group (PBSG) 1993 meeting referred to polar bears in terms of a ''circumpolar population,'' as ''Canadian populations,'' and ''world's polar bear sub-populations'' (PBSG 1995).

Section 3(11) of the MMPA defines the term ''population stock'' as ''a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature.'' The decision to consider a segment as a distinct population includes relative discreteness of the grouping in relation to the whole, i.e., whether the population is markedly separate from other populations as a consequence of physical, physiological, ecological, or biological factors.

There have been difficulties in consistently defining population stocks for many marine species under the MMPA. Dr. Barbara Taylor (1995) in a NMFS administrative report pointed out that although the definition of population remains elusive, it can be critical to good management. She asserted that ''population stock'' in the MMPA has both a biological and management meaning. In her discussion, Dr. Taylor contended that two populations should be managed separately if interchange is low as there are potentially strong negative effects of treating large areas as single populations when mortality is concentrated in small areas. Dr. Taylor also suggested that ''maintaining the range of a species meets the MMPA objective of maintaining marine mammals as significantly functioning elements of their ecosystems.''

Canada's management program for polar bear recognizes 12 discrete populations with a set quota for human-caused mortality specific to each population. Canada recognizes that it is important when delineating populations for effective management to consider geographic barriers, distribution, abundance, rate of exchange, recruitment, and mortality. Harvest data and scientific research have provided information to show that each population is relatively closed, with a clear core area and minimal overlap. A recent publication by Bethke et al. (1996) provides information on the manner in which the NWT populations are delineated, including methods and types of statistical analyses involved. Lee and Taylor (1994) summarized information on harvest data and practices.

Since harvest data and scientific research of Canada's polar bears have provided information to show that interchange between populations is low and human-caused mortality is concentrated within localized areas, the Service believes the management of polar bears in Canada as discrete populations is consistent with the term ''population stock'' as used in the MMPA and helps to ensure the maintenance of the polar bear throughout its range in Canada. Thus, the Service looked at whether it could make the required findings of the MMPA for each of Canada's 12 polar bear populations.

Population Status and Distribution

Although polar bears occur in most ice-covered areas of the Arctic Ocean and adjacent coastal land areas, their distribution is not continuous. They are most abundant along the perimeter of the polar basin for 120 to 180 miles (200 to 300 kilometers) offshore. The primary prey of polar bears is the ringed seal (*Phoca hispida*), followed by the bearded seal (*Erignathus barbatus*), with the relative abundance of seals affecting the distribution of polar bears. The long-term distribution of polar bears and seals depends on the availability of habitat which is influenced by seasonal and annual changes in ice position and conditions (U.S. Fish and Wildlife Service (USFWS) 1995).

It is estimated that there are 21,000 to 28,000 polar bears worldwide (PBSG 1995). The number of polar bears in Canada is estimated at 13,120 and is dispersed among 12 relatively discrete stocks as discussed above (Government of the Northwest Territories (GNWT) unpublished documents on file with the Service) (Map 1).

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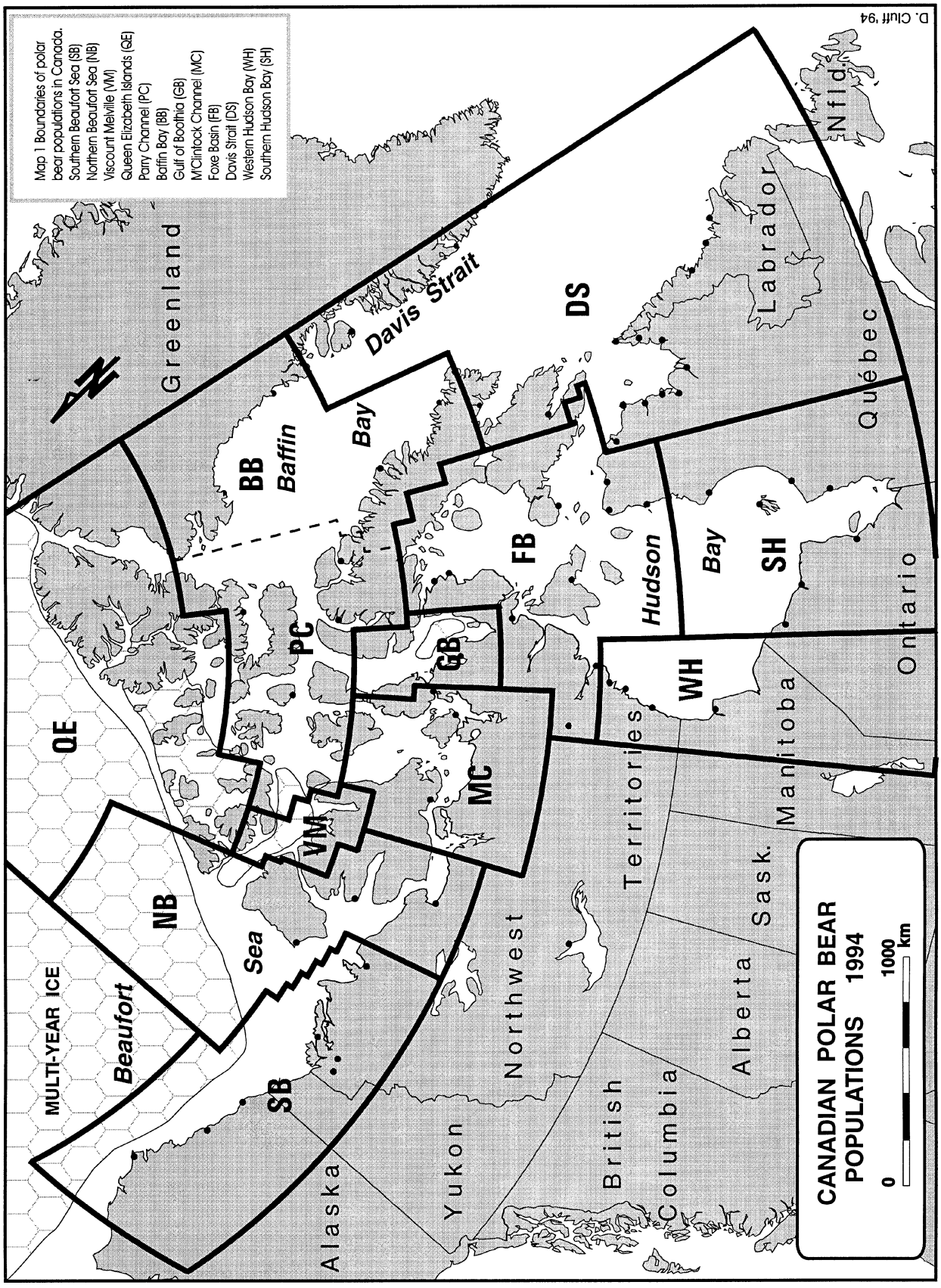


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Canada initially identified the boundaries of polar bear populations based on geographic features using reconnaissance surveys. Over time, Canada has confirmed and refined boundaries through scientific research on the movement of polar bears (e.g., mark-recapture, mark-kill harvest data, radio tracking, and satellite telemetry), local knowledge of bear movements, and physical factors affecting movements, such as ice formation and location of polynyas (i.e., areas where ice consistently breaks up and creates open water or areas where ice is refrozen at intervals during the winter) (GNWT). Canada expects to revise boundaries as research continues.

The boundaries of some of the 12 populations fall outside of Canadian jurisdiction. Specifically, extensive east-west movements of polar bears occur between northwestern Canada and northern Alaska, while in eastern Canada there is some information which demonstrates movement of bears between Canada and Greenland. The extent of this exchange is not yet clear.

Reproduction and Survival

Polar bears are intimately associated with Arctic ice. Based on the unpredictability in the structure of Arctic sea ice and associated availability of food, it is thought that adult males do not defend stable territories but may instead distribute themselves among different sea ice habitats at the same relative densities as solitary adult females (Ramsay and Stirling 1986). Males locate females that are ready to breed by scent and tracks. Polar bears mate while on the sea ice from late March through May, with implantation occurring in September. They typically form maternity dens in drifted snow in late October and November and cubs are born in December through January (USFWS 1995).

A summary of research data on the reproduction and survival in polar bears is given in Taylor et al. (1987) and Ramsay and Stirling (1986). Polar bears have a low birth rate and exhibit birth pulse reproduction. A small number breed for the first time at 3 years of age and slightly more at 4 years of age. Most females start to produce young at 5 or 6 years of age. Cubs remain with the female until they are about 2.5 years old, during which time the female avoids associating with adult males. This results in a skewed sex ratio, with fewer females available to breed in any one year than males and in intrasexual competition among males for access to breeding females. When the cubs are weaned, the female is again ready for breeding. Some females lose their cubs before weaning and are available for breeding the next season. Overall survival rates of cubs, adult female survival rates, litter size, and litter production rates affect the number of females available to breed. Females, on the average, breed every 3 years and stop reproducing at about 20 years of age.

Typically, each litter consists of two cubs with an overall 50:50 sex ratio. However, due to mortality, the average litter size ranges from 1.58 to 1.87 in the High Arctic populations to as high as 2.0 in Hudson Bay. The first year survival rate is high (0.70 to 0.85) because of the long period of female parental care. The life history strategy of the polar bear is typified by high adult survival rates (0.76 to 0.95) (GNWT).

Canada's Polar Bear Management Program

Polar bears occur in Canada in the Northwest Territories, in the Yukon Territory, and in the provinces of Manitoba, Ontario, Quebec, and Newfoundland and Labrador (Map 1). All 12 polar bear populations lie within or are shared with the NWT. The NWT geographical boundaries include all Canadian lands and marine environment north of the 60th parallel (except the Yukon Territory) and all islands and waters in Hudson Bay and Hudson Strait up to the low water mark of Manitoba, Ontario, and Quebec. The offshore marine areas along the coast of Newfoundland and Labrador are under Federal jurisdiction (GNWT).

Although Canada manages each of the 12 populations of polar bear as separate units, there is a somewhat complex sharing of responsibilities. While wildlife management has been delegated to the Provincial and Territorial Governments, the Federal Government (Environment Canada's CWS) has an active research program and is involved in management of wildlife populations shared with other jurisdictions, especially ones with other nations. In the NWT, Native Land Claims resulted in Co-management Boards for most of Canada's polar bear populations.

Canada formed the Federal-Provincial Technical and Administrative Committees for Polar Bear Research and Management (PBTC and PBAC, respectively) to ensure a coordinated management process consistent with internal and international management structures and the International Agreement. The committees meet annually to review research and management of polar bears in Canada and have representation from all the Provincial and Territorial jurisdictions with polar bear populations and the Federal Government. Beginning in 1984, members of the Service have attended meetings of the PBTC and biologists from Norway and Denmark have attended a number of meetings as well. In recent years, the PBAC meetings have included the participation of non-government groups, such as the Inuvialuit Game Council and the Labrador Inuit Association for their input at the management level. The annual meetings of the PBTC provide for continuing cooperation between jurisdictions and for recommending management actions to the PBAC (Calvert et al. 1995).

NWT Polar Bear Management Program

The GNWT manages polar bears under the Northwest Territories Act (Canada). The 1960 Order-in-Council granted authority to the Commissioner in Council (NWT) to pass ordinances that are applicable to all people to protect polar bear, including the establishment of a quota system. The Wildlife Act, 1988, and Big Game Hunting Regulations provide supporting legislation which addresses each polar bear population.

Although the Inuvialuit and Nunavut Land Claim Agreements supersede the Northwest Territories Act (Canada) and the Wildlife Act, no change in management consequences for polar bears is expected since the GNWT retains management and enforcement authority. Under the umbrella of this authority, polar bears are now co-managed through wildlife management boards made up of Land Claim Beneficiaries and Territorial and Federal representatives. One of the strongest aspects of the program is that the management decision process is integrated between jurisdictions and with local hunters and management boards. A main feature of this approach is the development of Local Management Agreements between the communities that share a population of polar bears. Management agreements are in place for all NWT populations. However, in the case of populations that the NWT shares with Quebec and Ontario (neither of which is approved under the criteria specified in this rule), the management agreement is not binding upon residents of communities outside of NWT jurisdiction.

The GNWT uses these agreements to develop regulations that implement the agreements. In addition to regulations to enforce the agreements, there is strong incentive to comply with the management agreements since they are developed co-operatively between the government and the resource users who directly benefit from the commitment to

long-term maintenance of the population. The interest and willingness of members of the community to conform their activities to observe the law reinforces other law enforcement measures. Regulations specify who can hunt; season timing and length; age and sex classes that can be hunted; and the total allowable harvest for a given population in Polar Bear Management Areas. The Department of Renewable Resources (DRR) has officers to enforce the regulations in most communities of the NWT. The officers investigate and prosecute incidents of violation of regulations, kills in defense of life, or exceeding a quota.

Harvest of Polar Bears

The hunting of polar bears is an important part of the culture and economy of indigenous peoples of the Arctic (PBSG 1995). Canada first imposed a hunting season in 1935; restricted hunting opportunities to Native people in 1949; and introduced quotas for polar bears in 1967. The harvest of polar bears was almost 700 in 1967/68, but dropped dramatically with the introduction of quotas. The largest increase occurred in the 1978/79 season when the quota was increased by 12 percent (Lee et al. 1994).

There often are a number of communities within the boundaries of each polar bear population. The total sustainable harvest for each population is divided among communities that harvest polar bears within the population boundaries. The resulting portions are referred to as the settlement quotas. When agreement on a community's settlement quota has been reached, that number of tags are provided each year to the Hunters' and Trappers' Organizations or Associations or Committees (HTO). Some communities may hold quota tags for several separate populations within their traditional hunting area, but communities may use tags only for the population for which the tags are issued (GNWT).

The GNWT does not administer sport hunting separately from other polar bear harvesting. An agent or broker usually arranges the polar bear sport hunts. In general, the agent or broker contacts the community's HTO to arrange for the hunt including the acquisition of a hunting license and tag for the hunter. If the community has not already decided what portion of its quota, if any, to designate for sport hunters, the HTO representative presents all requests for sport-hunting tags at a community meeting. The community decides on the number of tags designated for sport hunting. The tag cannot be resold or used by other sport hunters. In most cases the DRR officer retains the polar bear tags for sport hunts and provides them to the hunters. In a few cases, the HTO representative retains the tags and provides them to the hunters (GNWT).

There is substantial economic return to the community from sport hunts. The potential value of the actual hunt cost in 1993/94 in Parry Channel for one polar bear was $18,500 (US) with 80 percent of the money staying in the community. However, only a few communities currently take part in sport hunts as it reduces hunting opportunities for local hunters (GNWT). Table 1 summarizes the number of sport hunts that occurred in the different populations in the NWT for the 1992/93 and 1993/94 seasons. Overall, the number of quota tags used for sport hunting, including unsuccessful hunts, compared to the total known kill in the NWT averaged 10.9 percent for the 1989–1994 hunting seasons (Table 2).

Sport hunting for polar bears began in the NWT in 1969/70 with three hunts and gradually increased (GNWT). Over the five seasons between 1989–1994 the total number of sport hunts ranged from 37 to 66 (Table 2). All sport hunts are subject to certain restrictions. Sport hunts must be conducted under Canadian jurisdiction and guided by a Native hunter. In addition, transportation during the hunt must be by dog sled, the tags must come from the community quota, and tags from unsuccessful sport hunts may not be used again.

The success rate of a sport hunt is relatively high. The 1989–1994 seasons are characterized by success rates of 76 to 84 percent (Table 2), although the success rate does vary between populations (Table 1). Sport hunters typically select trophy animals, usually large adult males. For example, in the 1993/94 hunting season, 79 percent of polar bears taken as sport-hunting trophies were male (Table 1).

TABLE 1.—STATISTICS FOR POLAR BEAR SPORT HUNTING IN THE NWT FOR POPULATIONS IDENTIFIED AS SOUTHERN BEAUFORT SEA (SB), NORTHERN BEAUFORT SEA (NB), QUEEN ELIZABETH ISLANDS (QE), PARRY CHANNEL (PC), BAFFIN BAY (BB), GULF OF BOOTHIA (GB), AND FOXE BASIN (FB)

| Population | 1993/94 Season | | 1992/93 Season | | |
|---|---|---|---|---|---|
| | Number killed (number not successful) | Sport hunt percent of total | Percent male | Number Killed (number not successful) | Percent of total |
| SB | 3 (3) | 9.7 | 67 | 1 (0) | 2.7 |
| NB | 2 (3) | 8.1 | 100 | 1 (1) | 5.4 |
| QE | 0 (1) | 1.6 | ..... | 1 (0) | 2.7 |
| PC | 26 (2) | 45.2 | 85 | 22 (2) | 64.9 |
| BB | 5 (0) | 8.1 | 80 | 2 (1) | 8.1 |
| GB | 7 (3) | 16.1 | 86 | 4 (1) | 13.5 |
| FB | 5 (2) | 11.3 | 40 | 0 (1) | 2.7 |
| Total | 48 (14) | ..... | 79 | 31 (6) | ..... |

TABLE 2.—SUMMARY OF SPORT HUNT KILLS IN NWT

| Season | Total sport hunt | Number killed (percent success) | Known total kill in NWT | Percent total sport hunt to known kill in NWT |
|---|---|---|---|---|
| 1989/90 | 60 | 48 (80) | 537 | 11.2 |
| 1990/91 | 66 | 50 (76) | 490 | 13.5 |

TABLE 2.—SUMMARY OF SPORT HUNT KILLS IN NWT—Continued

| Season | Total sport hunt | Number killed (percent success) | Known total kill in NWT | Percent total sport hunt to known kill in NWT |
|---|---|---|---|---|
| 1991/92 | 48 | 39 (81) | 549 | 8.7 |
| 1992/93 | 37 | 31 (84) | 506 | 7.3 |
| 1993/94 | 62 | 48 (77) | 432 | 14.4 |
| Average | ..... | ..... | ..... | 10.9 |

Legal and Scientific Findings and Summary of Applicable Information

Currently, only the GNWT allows the sport hunting of polar bears. The Service reviewed the available scientific and management data for each of the 12 populations contained wholly or partly within the NWT and made findings to approve populations on an aggregate basis when the criteria of section 104(c)(5)(A) were met. The Service intends these findings to apply to bears taken in multiple harvest seasons, but can consider new information that may affect the findings at any time. If the Service determines by new information that the finding(s) are no longer supported, the Service must stop issuing import permits for sport-hunted trophies from affected polar bear population(s) following consultation with the MMC and after notice and opportunity for public comment.

The Service deferred making a decision on the remaining populations until further scientific and management data become available. Upon receipt of substantial new information, the Service will publish a proposal for public comment and consult with the Marine Mammal Commission. Any population found to meet all the criteria will be added to the list in § 18.30(i)(l).

*A. Legal Take*

1. Finding

The Service finds that the GNWT has a management program that ensures hunters are taking polar bears legally. This program includes the use of hunting licenses; quota tags; DRR officers in communities; collection of biological samples from the trophy and collection of data from the hunter; a regulated tannery; a computerized tracking system for licenses, permits and tags; and an export permit requirement to export the trophy from the NWT to other provinces. This is all within the context of the laws, regulations, and co-management agreements discussed earlier.

Under the 1994 Amendments the Service can issue permits only after the applicant submits proof that he or she took the polar bear legally. The Service will accept one of several different forms of documentation, as detailed in the regulations at § 18.30(a)(4).

2. Discussion of Legal Take

As described above, the agent or broker usually obtains the hunting license and tag for the hunter. Once the hunter has taken a polar bear, the DRR officer affixes a tag to the hide and collects biological samples. Polar bear tags are metal, designed for one-time use, and stamped with the words polar bear, an identification number, and the harvest year. The identification number in combination with the harvest year identifies the community to which the tag was assigned. If a tag is lost prior to being affixed to a hide, the hunter must report the lost tag number and other required information to the DRR officer prior to issuance of a replacement tag. In the event that the sport hunt is unsuccessful, the unused tag is destroyed.

By regulation, as soon as practicable after a person kills a bear, he or she must provide the following information to a DRR officer in the community, or a person who has been designated by the HTO and has the approval of a DRR officer: (a) the person's name; (b) the date and location where the bear was killed; (c) the lower jaw or undamaged post-canine tooth and, when present, lip tattoos and ear tags from the bear; (d) evidence of the sex of the bear; and (e) any other information as required. Except where an officer verifies the sex of the polar bear, the hunter must provide the baculum of the male polar bear for the purposes of determining sex. If proof of sex is not provided or an officer does not verify the sex of the bear, the GNWT will deem the bear to have been female for the purposes of population modeling.

Additional information, collected to complete a numbered Polar Bear Hunter Kill Return form, includes: community; polar bear population; harvest season; sex of the bear; approximate latitude and longitude of take using a map or description of the location with geographical references; general comments on the physical condition of the bear, including a measure of the fat depth; indication of whether the bear was alone or part of a family group (i.e., based on observation of the bears or bear tracks), including if the bear was a mother with cubs; estimated age class of the bear before tooth examination; disposition of the hide; hide value to the hunter; hunter's address and the hunter's license number; guide/outfitters name; and name of the DRR officer in the applicable community.

By NWT regulation, a licensed tanner must needle stamp each hide or pelt upon receipt so that the hide or pelt may be identified as belonging to a specific customer. Polar bear tags are not intended to remain on the hide during tanning. The tanner removes the polar bear tag and returns it to the owner of the hide.

In 1991, the DRR developed a Game License System to track all licenses, permits, and tags issued by the Department. It is accessible from any area of the NWT. All eight Regional Offices complete a monthly vendor return that contains information on all the licenses, permits, and tags issued during that month. The DRR can generate reports and searches as needed. Canada also maintains a computerized national polar bear harvest database. Up until quotas were established in 1967/68, harvest data were recorded opportunistically. Since 1977/78 all harvests have been recorded. If needed, Canada could track a polar bear trophy imported from Canada to the individual who took the bear.

An exporter of wildlife, including polar bear parts, must obtain a NWT Wildlife Export Permit from a DRR officer prior to export. The hunter must show the hunting license and submit the tag, either removed for tanning or removed at the time of export. The exporter also must obtain a CITES export permit prior to export of the polar bear parts from Canada (see discussion in the section on CITES) (GNWT).

*B. 1973 International Agreement on the Conservation of Polar Bears*

During the 1950's and 1960's, there was a growing international concern for the welfare of polar bear populations. The primary concern was that the increased number of bears being killed could lead to endangerment of populations. In 1968, biologists from the five nations with jurisdiction over polar bears (Canada, Denmark (for Greenland), Norway, the United States, and the former Union of Soviet Socialist Republics) formed the PBSG under the auspices of the International Union for Conservation of Nature and Natural Resources, now known as the World Conservation Union (IUCN). This group was in large part responsible for the development and ratification of the International Agreement, which entered into force in 1976 for a 5-year period and was reaffirmed in 1981 for an indefinite period. Greenland was later provided recognition through ''Home-rule'' although the Government of Denmark maintained its role in affairs of international scope.

The International Agreement unites nations with a vested interest in the Arctic ecosystem in supporting a biologically and scientifically sound conservation program for polar bears. It is a conservation tool that provides guidelines for management measures for polar bears. It defines prohibitions on the taking of polar bears as well as the methods of taking, and identifies action items to be addressed by the signatories, including protection of polar bear habitat and conducting research for polar bear.

The International Agreement is not self-implementing and does not in itself provide for national conservation programs. Each signatory nation has implemented a conservation program to protect polar bears and their environment (USFWS 1995). In the United States, the MMPA implements the International Agreement. Since the International Agreement left implementation and enforcement to each nation, different interpretations resulted in a diversity of practices in managing polar bear populations (Prestrud and Stirling 1995).

The main purpose of the PBSG is to promote cooperation between jurisdictions that share polar bear populations, coordinate research and management, exchange information, and monitor compliance with the International Agreement. The 1993 PBSG meeting concluded, ''Overall, it seemed that all countries were complying fairly well to the intent, if not necessarily the letter of the Agreement'' (PBSG 1995). Prestrud and Stirling (1995) concluded that the influence of the International Agreement on the circumpolar development of polar bear conservation has been significant and polar bear populations are now reasonably secure worldwide.

1. Finding

The Service finds that the GNWT has a monitored and enforced sport-hunting program that is consistent with the purposes of the International Agreement as required by the 1994 Amendments with the following limitation. The Service only approved populations where provisions are in place to protect females with cubs, their cubs, and bears in denning areas during periods when bears are moving into denning areas or are in dens. At this time the Service has deferred making a final decision for the Southern Hudson Bay or Foxe Basin populations. These populations share polar bears with Ontario and Quebec, respectively. Neither province has legislation to protect such bears or a written agreement with the GNWT to afford such protection. Native hunters of both provinces have agreed to protect females with cubs, their cubs, bears moving into dens, and bears in dens. However, given the limited reporting and collection of harvest information in Quebec and Ontario (PBSG, 1995) it is not possible to determine the effectiveness of the respective management programs to protect females with cubs, their cubs, bears moving into dens or bears in dens. As new management data become available on these populations, the Service will evaluate the data as to whether a proposed rule should be published to consider adding the populations to the approved list in § 18.30(i)(1).

2. Taking and Exceptions

Article I of the International Agreement prohibits the taking of polar bears, including hunting, killing, and capturing. Article III establishes five exceptions to the taking prohibition of Article I as follows: (a) for *bona fide* scientific purposes; (b) for conservation purposes; (c) to prevent serious disturbance of the management of other living resources; (d) by local people using traditional methods in the exercise of their traditional rights and in accordance with the laws of that Party; and (e) wherever polar bears have or might have been subject to taking by traditional means by its nationals.

The International Agreement does not disallow sport hunting of polar bears. Mr. Curtis Bohlen, head of the U.S. delegation at the 1973 negotiations of the International Agreement, clarified to the Service (pers. comm. 1995) that the U.S. position, which was generally agreed to by all, was that sport hunting could occur if the countries could define the national territories and waters subject to national jurisdiction so the remainder of the Arctic Ocean would become a ''*de facto*'' polar bear sanctuary.

However, the somewhat overlapping nature of Article III.1.(d) and (e) has led to confusion over which exception is applicable to allowing a sport hunt or who may hunt. The Service views them as follows. Exception (d) vests the local people with their traditional hunting rights when exercised in accordance with national law, whereas exception (e) creates a *de facto* polar bear sanctuary by allowing the take of polar bears only where polar bears have or might have been taken by traditional means by its nationals. Part of the confusion in viewing these exceptions is caused by Canada's declaration that allows the local people to sell a polar bear permit from the quota to a non-Inuit or non-Indian hunter, a provision that is in accordance with the laws of Canada.

Baur suggests that one possible interpretation of exception (e) would be that only ''nationals'' of a country could take polar bears within that country's area of traditional taking. Under this interpretation it would be illegal for U.S. citizens to hunt polar bears outside the United States. Baur offered, however, that the best interpretation of exception (e) is that the intent of all the IUCN drafts was to establish a taking prohibition outside of national territories, with particular reference to the ''high seas.'' The Parties chose to define a sanctuary area for polar bears in the Arctic Ocean by limiting the area within which taking could occur to those where hunting by traditional means occurred. Since such hunting was conducted mostly by Natives by ground transportation (e.g., dog teams, snowmobiles, etc.), the area affected seldom reached into the areas commonly understood to be ''high seas'' (Baur 1993).

Early drafts of the agreement included an exception to the prohibitions on killing polar bears for ''local people who depend on that resource.'' U.S. representatives, who were concerned that commercial dealers might hire local people to kill bears, felt the language was appropriate. Canadian representatives, on the other hand, wanted the words ''who depend on that resource'' deleted, arguing that the agreement should include the rights of people who are only culturally

dependent or even potentially dependent.

During development of the final document at the November 1973 meeting in Oslo, the delegates resolved the concerns raised by the terms ''high seas'' in Article III of the draft and ''local people who depend on the resource'' by specifying the vested class without resorting to geographic boundaries. A report to the Secretary of State from the U.S. delegation explained that the delegates agreed that ''there should be an overall prohibition on the taking of polar bears in Article I without specifying any geographic units and that the exceptions of Article III'' include exception (e), which in effect establishes a polar bear sanctuary. The report further explained that exception (d), allowing hunting by local people, did not appear to the U.S. delegation to be necessary because under exception (e) ''such hunting is of course permissible. However, some of the delegations felt that the Agreement would be more acceptable to their governments if the exception for local people was explicitly stated.''

Canada issued a declaration at the time of ratification of the International Agreement to clarify that it regards the guiding of sport hunters by aboriginal people, within conservation limits, to be allowed. The declaration states, ''The Government of Canada therefore interprets Article III, paragraph 1, subparagraphs (d) and (e) as permitting a token sports hunt based on scientifically sound settlement quotas as an exercise of the traditional rights of the local people.'' Canada declared that the local people in a settlement may authorize the selling of a polar bear permit from the quota to a non-Inuit or non-Indian hunter, provided a Native hunter guides the hunt, a dog team is used, and the hunt is conducted within Canadian jurisdiction.

The Canadian declaration did not define ''token sports hunt'' in terms of a specific percentage. In a May 1996 letter, the CWS wrote the Service that Canada did not define the term ''token'' at the time of the declaration and it would be difficult, if not impossible, to define it now. ''At the time the Agreement was signed, there was a fairly small number of Inuit guided sport hunts for polar bears taking place and no one knew whether or not the Inuit would continue to be interested in this option. However, it was strongly felt by Canada that if the Inuit wished to develop guided hunting, within scientific and legal constraints in order to realize a greater economic benefit, that their right to do so should be protected. The term 'token' was added because, in 1973, there was still a significant mood of public revulsion about the extremely unsportsmanlike hunting of polar bears from aircraft in Alaska and from large vessels in Svalbard. Consequently, the term 'token' in the Canadian letter of declaration was used to try to deflect or minimize unjustified negative public reaction to the inclusion of Inuit-guided hunts within a sustainable quota.'' Canada believes ''token'' should remain undefined since ''the important issue is that polar bears are being harvested within sustainable levels and the portion taken by Inuit-guided hunters is a matter for local people to determine for themselves.''

Neither the International Agreement nor Canada's declaration specifically restricts the proportion of hunts that can be sport hunts. Based on the above clarification from Canada and further review of the International Agreement, the Service dropped the proposed interpretation of ''token sports hunts'' as 15 percent of the total number of polar bear taken in the NWT. The Service believes that although it may be confusing that Canada has not defined ''token,'' as long as the quota is scientifically calculated and the NWT polar bear management program is sustainable, the International Agreement is not violated. Therefore, the Service is interpreting ''token sports hunt'' as sport hunts that are within conservation limits. The Service notes that any pressure to increase the quota as a result of an increase in sport hunting will be carefully examined by the Service in the course of its scientific review of the impact of import permits on the polar bear populations in Canada.

3. Protection of Habitat, Management of Polar Bear Populations, and the Prohibition on Taking Cubs and Females With Cubs

Article II of the International Agreement provides that Parties: (1) take ''appropriate action to protect the ecosystem of which polar bears are a part''; (2) give ''attention to habitat components such as denning and feeding site and migration patterns''; and (3) manage polar bear populations in accordance with ''sound conservation practices'' based on the best available scientific data (Baur 1993).

At the 1973 Conference, the Parties to the International Agreement adopted a non-binding ''Resolution on Special Protection Measures'' urging Parties to take steps to: (a) provide a complete ban on the hunting of female polar bears with cubs and their cubs and (b) prohibit the hunting of polar bears in denning areas during periods when bears are moving into denning areas or are in dens. In adopting this resolution, the Parties recognized the low reproductive rate of polar bears and suggested that the measures ''are generally accepted by knowledgeable scientists'' to be ''sound conservation practices'' within the meaning of Article II. While the signatory nations consider the prohibitions in the resolution important, they are not terms of the International Agreement itself and are not legally binding (Baur 1993). Although biologists at the 1993 PBSG meeting discussed the resolution, they did not reach agreement over the interpretation of whether females with their cubs and cubs are specially protected under the International Agreement (PBSG 1995).

Although the Service recognizes that the resolution is not binding, the 1994 Amendments require the Service to make a finding that Canada's management program is consistent with the purposes of the International Agreement. The resolution clearly falls within the purposes of sound conservation practices of Article II. Thus, the Service will only approve populations where provisions are in place to protect females with cubs, their cubs, and bears in denning areas during periods when bears are moving into denning areas or are in dens.

The Service finds that the GNWT meets the resolution to the International Agreement. At the time of the proposed rulemaking the GNWT wildlife regulations protected cubs-of-the year, 1-year-old cubs, and mothers of these bears. The GNWT in cooperation with the resource users have since revised all management agreements to protect all bears in family groups regardless of the age of the cubs (Ron Graf, DRR, personal communication). The Service has deferred a decision on the Southern Hudson Bay population that is shared with Ontario and the Foxe Basin population that is shared with Quebec. These provinces have no legislation in place to protect such bears and no written management agreement with the GNWT to afford such protection. Upon receipt of substantial new management data, the Service will publish a proposal for public comment and consult with the MMC. If the Service finds that a population meets all the criteria, the population will be added to the list in § 18.30(i)(1).

4. Prohibition on the Use of Aircraft and Large Motorized Vessels

Article IV of the International Agreement prohibits the use of ''aircraft and large motorized vessels for the purpose of taking polar bears * * *

except where the application of such prohibition would be inconsistent with domestic laws.''

It is illegal in Canada to hunt, pursue, or scout for polar bears from aircraft (PBSG 1995). Native hunters may travel and hunt polar bears by 3-wheel ATV (all-terrain vehicles), snowmobile, and boats under 15 meters. Sport hunters and their aboriginal guides must conduct the hunt by dog team or on foot. Access to the communities is by air only, so sport hunters must fly to reach their destinations. Aircraft, snow machines, and boats are used sometimes to transport equipment, hunters, and dogs to base camps that can be a great distance from the community. The hunt continues from the base camp by dog team. Canada does not interpret transportation by air or other motorized vehicle to a place where the hunt begins as a violation of Article IV of the International Agreement (GNWT). The Service agrees with this interpretation. Baur (1993) explained that Article IV of the International Agreement ''followed strong opinion that the hunting of polar bears with aircraft should be stopped and, furthermore, that the prohibition against the use of large motorized vessels for taking was directed at the practice, which was particularly common in the Spitsbergen area, of hunting bears from vessels of 100 feet or longer.'' Article IV of the International Agreement, appears to address the use of aircraft for actually hunting the bear, not the use of aircraft as a means of transport to a base camp from which a hunt begins.

A second issue regarding the use of snowmobiles and aircraft is whether the use of such equipment opens up non-traditional areas of polar bear hunting, thus violating exception (e) of Article III.1. of the International Agreement. The Service believes that the use of snowmobiles and aircraft in the NWT for transportation in the course of a hunt does not violate exception (e). First, numerous historical accounts identify and document traditional land use areas for polar bear hunting in the NWT. In particular, the Inuit Land Use and Occupancy Project, which formed the basis of the Nunavut land claim, established much of the information on the historical and traditional land use by Inuit in the NWT (CWS 1996). Second, the delegates addressed concerns regarding the use of snowmobiles during development of the International Agreement. The report to the Secretary of State from the U.S. delegation to the Conference states, ''In regard to the snowmobile, which in many places has replaced the dog sled as the means of transportation for Eskimos, the polar scientists explained that in many circumstances it cannot penetrate the ice area as far as a dog sled can. Therefore, the use of the snowmobile should not diminish the area of protection.'' Similarly, due to the high operating costs and the inaccessibility of aviation fuel in many Arctic communities, airplanes cannot travel into areas that were not otherwise reached by traditional means such as dog sled.

*C. Scientifically Sound Quotas and Maintenance of Sustainable Population Levels*

The GNWT manages polar bear with a quota system based on inventory studies, sex ratio of the harvest, and population modeling using the best available scientific information. The rationale of the polar bear management program is that the human-caused kill (e.g., harvest, defense, or incidental kills) must remain within the sustainable yield, with the anticipation of a slow increase in number for any population. Each population is unique in terms of both ecology and management issues, and baseline information ranges from very good in some areas to less developed in others. But overall, polar bear populations in Canada are considered to be healthy (GNWT).

The text of the House of Representatives floor debate on the 1994 Amendments (140 Cong. Rec. H2725, April 26, 1994) states that the intent of the Amendments was not to change Canada's management program or to impose polar bear management policy or practices on Canada through the imposition of any polar bear import criteria. The Service agrees and believes the intent of Congress was to ensure ''* * * sport hunting of polar bears does not adversely affect the sustainability of the country's polar bear populations and that it does not have a detrimental effect on maintaining those populations throughout their range'' (Committee Report, H.R. Rep. No. 439, 103d Cong., 2d Sess. 34 (1994)).

1. Finding

Based on information as summarized in this final rule, the Service finds that the GNWT has a sport-hunting program, based on scientifically sound quotas, ensuring the maintenance of the affected population at a sustainable level for the following populations: Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville Sound (under a 5-year moratorium), M'Clintock Channel, and Western Hudson Bay with provisions that there are management agreements in place.

These are aggregate findings that are applicable in subsequent years. However, if the Service receives substantial new information on a population, the Service will review the information and make a new finding as to whether to continue to approve the population. If, after consultation with the MMC and notice and opportunity for public comment, the Service determines that the finding is no longer supported, the Service must stop issuing import permits for sport-hunted trophies from the affected polar bear population.

Prior to making the finding as required under § 18.30(d)(5), the Service will consider the overall sport-hunting program, including such factors as whether the sport-hunting program includes: (a) reasonable measures to make sure the population is managed for sustainability (i.e., monitoring to identify problems, ways of correcting problems, etc.); (b) harvest quotas calculated and based on scientific principles; (c) a management agreement between the representatives of communities that share the population to achieve the sustainability of the program through, among other things, the allocation of the population quota; and (d) compliance with quotas and other aspects of the program as agreed in the management agreement or other international agreements.

The Service has deferred making findings for the following populations: Queen Elizabeth Island, Parry Channel/Baffin Bay, Gulf of Boothia, Davis Strait, Foxe Basin, and Southern Hudson Bay. Upon receipt of substantial new scientific or management data on the overall sport-hunting program of any of these populations, the Service will evaluate whether a given population meets the issuance criteria after consultation with the MMC and notice and opportunity for public comment. If the decision is to approve a population, the Service will add it to the list at § 18.30(i)(1).

No person may import a polar bear prior to the Service's issuance of an import permit for the specific sport-hunted trophy.

2. Inventory

It is difficult and expensive to determine population trends for polar bears since they are distributed over vast areas in the Arctic environment. A minimum of 3 to 5 years of research is needed to gain a reliable population estimate, and data collection needs to continue for 10 to 20 years to detect significant changes (Prestrud and Stirling 1995). Each population in the NWT is assessed by periodic population

inventory done on a rotational basis. With study of two or more populations conducted concurrently, the time required to sequentially assess all 12 populations and then begin the process over again is projected to be 20 years.

The first part of the inventory process identifies the geographic boundaries of each population. The second part of the inventory process is to estimate the size of a population. The basic principle behind the use of mark-recapture and mark-kill data in wildlife management is that given a known number of identifiable animals, the rate at which those animals are recaptured or killed provides an assessment of the size of the population. By regulation, a person must submit to the DRR at the time of harvest of the bear the lip tattoos or ear tags applied to polar bears in the course of population inventories. The GNWT monitors the sex and age structure of the harvest. Changes in the sex and age of the harvest over time provide insight into whether the population may be increasing or declining.

The GNWT then uses this information to calculate a sustainable level of harvest. Should mark-kill data, information from the monitoring program, or reports from local hunters suggest a problem with a particular population, Canada could shorten the period between assessments depending on the availability of research resources.

Canada incorporates data from ongoing research into management practices as appropriate. Management of this species is based on information from studies that have been published in reports, conference proceedings, and refereed scientific journals.

3. Calculation of Sustainable Harvest

Polar bears are a long-lived and late maturing species that have a low annual recruitment rate. Their life history strategy is a reliance on a constantly high adult survival rate and stable recruitment. Consequently polar bears are particularly vulnerable to overharvest. Conservation management and comparisons with other long-lived species suggest that noncompensatory harvest models are most appropriate for polar bears (Taylor et al. 1987).

The GNWT manages polar bears under the assumption that the polar bear populations are experiencing maximal recruitment and survival rates (e.g., no density effects). The estimated sustainable rate of harvest is then the maximum sustainable harvest. When the Service inquired why this assumption was made, the GNWT responded that they believe it is a legitimate and conservative approach. Little is known about density-dependent population regulation in bears, including polar bears (Taylor et al. 1994). The current data are insufficient to determine if the mechanism is mainly nutritional, mainly social, or a combination of social and nutritional. In addition, the study of density effects on polar bears would be a long-term proposition and very expensive due to the slow growth rates, high environmental variability, and behavioral plasticity of the species. The intention of the GNWT is to ensure the conservation of existing populations with good data and management before doing more experimental work. They believe the need for information on density effects will increase as populations slowly increase under the current management system, and anticipate that their periodic inventory and subsequent management changes will provide information on how polar bear populations respond to various density levels over the long term (GNWT).

Based on a model developed cooperatively between all jurisdictions managing polar bears, it was demonstrated that the two most critical parameters for estimating sustainable harvest are population numbers and adult female survival rate (Taylor et al. 1987a). As a result of sampling biases in the available data, Canada simplified the detailed analysis to contain only the most important features. One such simplification involved the use of pooled best estimates for vital rates for all Canadian polar bear populations. Using the pooled best estimates for vital rates, the polar bear harvest model indicated that the sustainable harvest (H) of a population could be estimated as:

$$H = N\,(0.015/P_f),$$

where N is the total number of individuals in the population and $P_f$ is the proportion of females in the harvest measured directly from the harvest returns. The formula can also be modified for populations with different renewal rates and, if new information becomes available, on birth and death rates (GNWT).

Table 3 provides information on each population including the population estimate, the total kill (excluding natural deaths), percentage of females killed, and the calculated sustainable harvest for the 1993/94 harvest season and averaged over the preceding three and five seasons. Based on this information, the status of the population is designated as increasing, stable, or decreasing, represented by the symbols ''+'', ''0'', ''−''. The population status is expressed as the difference between the calculated sustainable harvest and the kill. For example, the calculated sustainable harvest for the Southern Beaufort Sea 1993/94 harvest season was 81.1. Since the total kill was 64, the harvest of polar bears in the Southern Beaufort Sea did not exceed the sustainable yield. Therefore, the population had the potential to increase. In contrast, the Foxe Basin (FB) kill exceeded the sustainable harvest, thus the population status is represented as declining.

TABLE 3.—POPULATION STATUS FOR CANADIAN POLAR BEAR POPULATIONS INCORPORATING HARVEST STATISTICS FROM 1989/90 TO 1993/94. THE POPULATIONS ARE IDENTIFIED AS FOLLOWS: SOUTHERN BEAUFORT SEA (SB), NORTHERN BEAUFORT SEA (NB), VISCOUNT MELVILLE (VM), QUEEN ELIZABETH ISLANDS (QE), PARRY CHANNEL (PC), BAFFIN BAY (BB), GULF OF BOOTHIA (GB), M'CLINTOCK CHANNEL (MC), FOXE BASIN (FB), DAVIS STRAIT (DS), WESTERN HUDSON BAY (WH), AND SOUTHERN HUDSON BAY (SH). THE PERCENT FEMALES (%♀) Statistic [1] Does Not Include Bears of Unknown Sex Except for Labrador (1991/92 AND 1992/93) AND GREENLAND (ALL 5 YEARS). HARVEST STATISTICS INCLUDE ALL REPORTED HUMAN-CAUSED MORTALITY OF POLAR BEARS. NATURAL DEATHS ARE NOT INCLUDED

| Pop.[2] | Pop. estimate | Reliability* | 5-Year average (1989/90–1993/94) | | 3-Year average (1991/92–1993/94) | | Current Year (1993/94) | | Population status** (5yr/3yr/1yr) |
|---|---|---|---|---|---|---|---|---|---|
| | | | Kill(%♀) | Sustainable harvest[3] | Kill(%♀) | Sustainable harvest[3] | Kill(%♀) | Sustainable harvest[3] | |
| SB | [6]1800 | Good | 60.4 (39.6) | 68.2 | 66.0 (39.5) | 68.4 | 64 (32.2) | 81.1 | +/+/+ |
| NB | 1200 | Good | 32.2 (49.4) | 36.4 | 30.0 (45.5) | 39.6 | 16 (50.0) | 36.0 | +/+/+ |
| VM[4] | 230 | Good | 5.2 (45.8) | 1.2 | 2.0 (83.3) | 0.7 | 2 (50.0) | 1.1 | −/0/0 |
| QE | 200 | Poor | 10.6 (32.1) | 9.0 | 9.7 (24.1) | 9.0 | 11 (29.3) | 9.0 | 0/0/0 |

TABLE 3.—POPULATION STATUS FOR CANADIAN POLAR BEAR POPULATIONS INCORPORATING HARVEST STATISTICS FROM 1989/90 TO 1993/94. THE POPULATIONS ARE IDENTIFIED AS FOLLOWS: SOUTHERN BEAUFORT SEA (SB), NORTHERN BEAUFORT SEA (NB), VISCOUNT MELVILLE (VM), QUEEN ELIZABETH ISLANDS (QE), PARRY CHANNEL (PC), BAFFIN BAY (BB), GULF OF BOOTHIA (GB), M'CLINTOCK CHANNEL (MC), FOXE BASIN (FB), DAVIS STRAIT (DS), WESTERN HUDSON BAY (WH), AND SOUTHERN HUDSON BAY (SH). THE PERCENT FEMALES (%♀) STATISTIC [1] DOES NOT INCLUDE BEARS OF UNKNOWN SEX EXCEPT FOR LABRADOR (1991/92 AND 1992/93) AND GREENLAND (ALL 5 YEARS). HARVEST STATISTICS INCLUDE ALL REPORTED HUMAN-CAUSED MORTALITY OF POLAR BEARS. NATURAL DEATHS ARE NOT INCLUDED—Continued

| Pop.[2] | Pop. estimate | Reliability* | 5-Year average (1989/90–1993/94) | | 3-Year average (1991/92–1993/94) | | Current Year (1993/94) | | Population status** (5yr/3yr/1yr) |
|---|---|---|---|---|---|---|---|---|---|
| | | | Kill(%♀) | Sustainable harvest[3] | Kill(%♀) | Sustainable harvest[3] | Kill(%♀) | Sustainable harvest[3] | |
| PC–BB | [6]2470 | Fair | 197.0 (30.7) | 111.3 | 199.3 (31.5) | 111.3 | 200 (31.9) | 111.3 | –/–/– (data uncertain) |
| GB | 900 | Poor | 37.8 (40.4) | 33.4 | 38.7 (36.5) | 37.0 | 36 (40.0) | 33.7 | –/0/0 |
| MC | 700 | Poor | 30.4 (40.3) | 26.1 | 27.3 (33.7) | 31.2 | 24 (33.3) | 31.5 | –/+/+ |
| FB[5] | 2020 | Good | 128.6 (40.8) | 74.3 | 125.0 (41.7) | 72.7 | 100 (48.5) | 62.5 | –/–/– |
| DS | [6]1400 | Fair | 55.0 (41.6) | 50.5 | 58.0 (38.2) | 55.0 | 58 (36.2) | 58.0 | –/0/0 |
| WH | 1200 | Good | 44.8 (32.1) | 54.1 | 41.3 (27.6) | 54.1 | 32 (40.6) | 44.3 | +/+/+ |
| SH | 1000 | Fair | 59.0 (32.5) | 45.0 | 51.0 (36.2) | 41.4 | 45 (33.3) | 45.0 | –/–/0 |
| Total[6] | 13120 | | 661.0 | 509.5 | 648.3 | 520.4 | 588 | 513.5 | |

*GOOD: Minimum capture bias, acceptable precision. FAIR: Capture bias problems, precision uncertain. POOR: Considerable uncertainty, bias and/or few data.

**A difference of up to 3 bears between the kill and sustainable harvest statistics was considered to be no change in status. (–=decrease 0=no change +=increase)

**Notes:**

[1] The percent of killed bears that are females is not regulated by law in all populations, but rather % Females is specified as a target in many of the Local Management Agreements.

[2] Local Management Agreements now exist for all populations except QE. These agreements are reviewed periodically as new information becomes available.

[3] Except for the VM population, the sustainable harvest is based on the sex ratio of the harvest, the population estimate (N) for the area and the estimated rates of birth and death (Taylor et al. 1987):

SUSTAINABLE HARVEST=(N×0.015)÷Proportion of Harvest that were Females.

Unpublished modelling indicates a sex ratio of 2 males to a female is sustainable, although the mean age and abundance of males will be reduced at maximum sustainable yield. Harvest date (Lee and Taylor, 1994) indicates that the harvest is typically selective for males.

[4] The rate of sustained yield of the VM population is one sixth that of the other populations because of lower cub and yearling survival, and lower recruitment. The projected proportion of the harvest that are females is 15% based on the intention to take only males. A 5-year voluntary moratorium on harvesting bears in the VM population began in 1994/95.

[5] Communities that harvest from the FB population have agreed to a phased reduction in quota. The final harvest level will be 91 bears or the sustainable yield as determined by subsequent population estimates by 1997.

[6] Totals refer to the sum of the all populations within or shared with Canada.

Modeling has shown that the sex ratio of the polar bear harvest is a critical factor in calculating the sustainable yield of polar bear populations (Lee et al. 1994). A selective harvest quota based on a harvest ratio of two males to one female can be 50 percent higher than an unselective one (GNWT). Increasing the harvest of males as a means of increasing the sustainable yield and conserving the reproduction potential of the population is a common technique in wildlife management. This is applicable particularly for species such as bears where mating is promiscuous and recruitment is primarily a function of the number of adult females (Taylor et al. 1987).

Since the GNWT bases the population quota, in part, on the sex ratio of the harvest, Local Management Agreements have been developed with the intention to limit the female kill by prescribing a harvest sex ratio of two males for each female. Some communities have the sex ratio as a target and others have it as a regulation. For both situations, the kill of female polar bears has exceeded the annual sustainable yield in some communities in some years. The DRR is seeking resolution to this problem including the development of conservation education materials in an effort to reduce take of females due to misidentification of sex. They revised a booklet on how to distinguish between males and females to incorporate suggestions from hunters and produced posters to encourage hunters to select for males. In addition, the DRR developed a revised system referred to as the ''Flexible Quota Option'', based on the number of female bears that can be taken annually. This system requires adoption into regulation prior to implementation (GNWT).

When Canada presented the sex-selective harvest model at the 1993 PBSG meeting, biologists raised concerns. One concern was the difficulty of accounting for compensation in the model if more females were taken. Also, there was concern that if the population model was incorrect or if ecological conditions changed substantially, there would be a delay of many years before managers would realize that the predictions of the model were incorrect. Some felt this delay was too high a risk for use as a management tool (PBSG 1995). The DRR is aware of the concerns and continues to monitor information on number, sex, and age of most polar bears harvested. In addition, local hunters are familiar with the relative abundance of polar bears in their areas and would likely notice significant increasing or decreasing trends in polar bear numbers. Because of both the monitoring program and the contribution of local knowledge, the DRR anticipates they would likely detect any overharvest or significant change in the population due to natural ecological reasons. The DRR plans to do a comprehensive risk analysis to consider all sources of uncertainty and to examine the inventory rotation period and the current standards for precision in the estimates of population size, but a date has not been set for its completion (Mitch Taylor, personal communication). Canada is co-operatively developing a simulation model to explore the effects of harvesting black, grizzly, and polar bears with the Ontario Ministry of Natural Resources (GNWT 1996).

4. Quota

In 1968 when the GNWT started to set quotas, the size of polar bear

populations on which to base sustainable quotas was largely unknown. So the GNWT introduced quotas on an interim basis considering previous harvest records for each community. After the late 1970's, quotas were increased on the basis of new scientific information for each population (Prestrud and Stirling 1995). Quotas continue to undergo adjustments based on new information. As a result of studies conducted since 1991 and earlier, quotas have been reduced for the M'Clintock Channel and Foxe Basin populations, and there is currently a moratorium on hunting in the Viscount Melville population. Presently, the calculated sustainable harvest for each population represents the population quota. The quota allocated is specific to each population. A quota allocated for one population cannot be used in another population. Quotas are not carried over from one year to the next.

The GNWT subtracts all human caused mortality from the quota, including polar bears killed in sport hunts, taken in defense of life or property, or shot illegally, as well as accidental deaths from research studies. Occasionally the quota is exceeded due to unexpected defense kills, mistakes, or illegal kills. Typically the GNWT deducts an overharvest from the following year's quota as a correction (GNWT). On an annual basis, the GNWT presents the population quotas and a summary of previous years harvest data for each population to the PBTC in a manner comparable to that shown in Table 3. The DRR has reported the reliability of each population estimate in qualitative terms (i.e., Good, Fair, or Poor) rather than quantitative because of bias in the population estimate as a result of sampling problems. The DRR expects they will use quantitative terms in future status reports as they complete population inventories (GNWT).

5. Status of Populations the Service Approves

The Service approved populations as meeting the required finding of section 104(c)(5)(A)(ii) of the MMPA based on currently available information. A list of the approved populations and general provisions are given in § 18.30(i).

*Southern Beaufort Sea (SB)*

The estimated population is 1,800 and is considered to be conservative. Mark-recapture and studies of movements using telemetry, conducted semi-continuously since the late 1960's in Alaska and the early 1970's in Canada have determined the boundaries of this population. The GNWT rates the population data as good. Table 3 shows the status of the population as increasing based on the 5-year and 3-year average of harvests and the 1993/94 harvest. Of the 64 bears taken in the 1993/94 harvest, 32.2 percent were females. Guiding of sport hunts occurs on a limited basis in the Canadian portion of the population. The number of sport hunts conducted for the 1993/94, and 1992/93 seasons was 6 and 1, respectively (GNWT).

The NWT and Yukon Territory share this population with Alaska. In Alaska polar bears are only taken for subsistence and handicraft purposes by Alaska Natives. Harvest of bears on either side of the international border affects the entire population. The Beaufort Sea boundary remains an issue of dispute between the United States and Canada as noted in the results of the Ottawa Summit. The United States views the Canadian jurisdiction to end at the equidistant line and no bears should be taken west of that line.

To date, the governments of the United States and Canada have not signed an international agreement for the joint management of the Southern Beaufort Sea population. However, in January 1988, representatives of the Inuvialuit Game Council (IGC) in the NWT and the Fish and Game Management Committee of the North Slope Borough (NSB) in Alaska (USFWS 1995) signed a management agreement for polar bears in the Southern Beaufort Sea. Although the agreement is not with the Canadian or U.S. governments, it is signed by both Native groups and continues to be successful overall (Prestrud and Stirling 1995). The agreement is a precedent-setting example of how Native groups can successfully manage traditional harvest practices through self-regulation. In Canada the agreement is consistent with previously existing regulations. In Alaska it is more restrictive than the MMPA (Nageak, Brower, and Schliebe 1991). The agreement has management restrictions that are consistent with the International Agreement. The agreement, among other things, calls for: (1) establishing harvest limits based on the best available scientific evidence; (2) prohibitions on the use of large vessels or aircraft for hunting polar bears; (3) protection of all bears in dens or constructing dens, pregnant females, cubs, and females with cubs; (4) a management system to regulate the number of polar bears harvested and to ensure compliance with harvest limit allocations; (5) a reporting system to collect critical information from harvested polar bears; and (6) protection of important polar bear habitat.

Under the agreement, the Native groups set the initial annual harvest quota for the Southern Beaufort Sea population at 38 bears each in Canada and Alaska. They share information pertinent to the status of the entire population in various ways, including the PBTC meetings, IUCN/PBSG meetings, and the annual Technical Committee meeting for the agreement.

Both Parties have agreed that all bears in dens or constructing dens are protected and family groups made up of females and cubs-of-the-year or yearlings are protected. During the first harvest (1988/89) under the management agreement take in Alaska exceeded the guidelines by 20, while the harvest in Canada was below the allocation. However the harvest during the next three seasons were less than allocation guidelines in both Alaska and Canada. It is believed that the reduced take by the second harvest season was due to extensive efforts to distribute information on the management agreement. In addition, there has been a general trend in Alaska to harvest fewer family groups (USFWS 1995).

The population is also shared by the Yukon Territory where the legal basis for regulating polar bears is the Wildlife Act, 1981. Currently there are no residents of the Yukon harvesting polar bears as the people all moved to the NWT. The Yukon wishes to retain their management system in case the aboriginals return to the Yukon coast and harvest polar bears. The Yukon has a total quota of six tags that they have loaned to the GNWT. These tags are included in the NWT quota (GNWT).

The Service approves the Southern Beaufort Sea population with the specific provision that hunters not take bears in Canada west of the equidistant line of the Beaufort Sea and that the general provisions in § 18.30(i) must be met. These provisions require the communities that share a population to have a management agreement that allocates portions of a scientifically sound quota among the parties.

*Northern Beaufort Sea (NB)*

Canada estimates the population at 1,200 polar bears and believes the estimate is unbiased and conservative. At intervals since the early 1970's, Canada has conducted mark-recapture and studies of movements using telemetry. They determined boundaries of the population using telemetry and recovery of tagged bears. An ongoing study is examining the possibility that this population extends further north than the data previously indicated. The GNWT rates the population data as good. Table 3 shows the status of the

population as increasing based on the 5-year and 3-year average of harvests and the 1993/94 harvest. Although the proportion of females in the harvest has been at or near 50 percent, the sustainable yield of females has not been exceeded. Guiding of sport hunters occurs on a limited basis. Only 2 to 3 sport hunts occurred in the two seasons between 1992–1994.

*Viscount Melville Sound (VM)*

Canada believes the population estimate of 230 polar bears to be unbiased. In 1992, Canada completed a 5-year mark-recapture and telemetry study of movements and population size. They based boundaries of the population on observed movements of female polar bears. In the mid-1970's when Canada allocated the original quotas, they thought this population was large and productive. This area, however, has poor seal habitat and the productivity of polar bears was lower than expected. Harvesting polar bears at the initial quota levels caused the number of bears in the population to drop, especially males. There is a moratorium on polar bear hunting in this population until the year 2000. The GNWT anticipates that when harvest activities resume, there will be an annual quota of 4 males. The Service does not consider this area as being available for U.S. sport hunters at this time.

Although all hunting is currently disallowed in this area, the Service approved the Viscount Melville population since there is a management program in place that includes measures to return and then maintain the population at a sustainable level.

*M'Clintock Channel (MC)*

In the mid-1970's, Canada conducted a 6-year mark-capture population study. They estimated the population to be 900 polar bears. Local hunters advised that 700 might be a more accurate estimate. Under a Local Management Agreement between Inuit communities that share this population, the harvest quota for this area has been revised to levels expected to achieve slow growth based on the more conservative population estimate of 700 polar bears. The recoveries of tagged bears and movements documented by telemetry in adjacent areas support the boundaries. Table 3 shows the status of the population as increasing based on the 3-year average and the 1993/94 harvest. Of the 24 bears taken in the 1993/94 harvest, 33 percent were females.

Although Canada considers the population estimate information as poor, the Service approved this population since the DRR in conjunction with local resource users have agreed to a reduction in the population estimate, hunting has been at a 2:1 ratio for several years, and there is a management agreement in place.

*Western Hudson Bay (WH)*

Canada believes the population estimate of 1,200 is conservative as a portion of the southern range has not been included in the mark-recapture program. Canada has conducted research programs on the distribution and abundance of the population since the late 1960's, with 80 percent of the adult population marked. Mark-recapture studies and return of tags from bears killed by Inuit hunters have provided extensive records. The GNWT rates the population data as good. Table 3 shows the status of the population as increasing based on the 5-year and 3-year average of harvests and the 1993/94 harvest. Of the 32 bears taken in last year's harvest, 40.6 percent were females. During the open-water season, this population is geographically segregated. During the ice-covered months there is some mixing of bears with the Foxe Basin and Southern Hudson Bay populations. However, such movements are believed to be very limited. Given the high number of marked bears in the Western Hudson Bay population and the recent, intensive study of the Foxe Basin population, substantial mixing of bears would be apparent if it were occurring.

The NWT shares the Western Hudson Bay population with Manitoba, where the Wildlife Act of 1991 lists the polar bear as a protected species. There is no open hunting season and polar bears cannot be hunted at any time of the year by anyone. To hunt polar bears, including hunting by Treaty Indians, requires a permit from the Minister and the Minister is not issuing permits at this time. The Local Management Agreement allocates a quota of 27 tags out of 55 for the Western Hudson Bay population to Manitoba. Manitoba holds eight tags in reserve for the control program and accidental deaths associated with the research program. They currently loan the remaining 19 to the GNWT for its quota (GNWT). This does not mean that there is a total ban on hunting polar bears in the future. The Minister can authorize the taking of bear for any purpose ''not contrary to public interest.'' The current policy is that no person will be granted a permit to hunt polar bear until it is established there is a harvestable surplus over conservation needs of the population that takes into account political and scientific concerns (Calvert et al. 1995).

6. Status of Populations for Which Scientific and Management Data are not Presently Available for Making a Final Decision

After reviewing the best available scientific and management data on the populations addressed below, the Service is not prepared to make a final decision on whether these populations satisfy the statutory criteria of section 104(c)(5)(A) of the MMPA. As future scientific and management data become available on these populations, the Service will evaluate such data to determine whether a proposed rule should be published that would add such populations to the approved list in § 18.30(i)(l).

Except for the Gulf of Boothia, the NWT shares all of the following populations with Greenland, another Canadian province, or both. Greenland and the other Canadian provinces do not have agreements with other NWT communities as to how they will manage their portions of the populations. Management agreements drafted in 1994 for the Davis Strait, Foxe Basin, and Southern Hudson Bay populations allocated existing harvest levels to NWT communities and documented current known annual harvest levels for Ontario, Quebec, Newfoundland and Labrador, and Greenland. Following completion of comprehensive population studies, the sustainable harvest of each population will be estimated and the user groups through joint negotiations will allocate the quotas. Canada and Greenland are conducting joint research to confirm shared population boundaries and population estimates. Upon completion of this joint research the two countries are expected to move ahead with negotiations on developing joint management agreements (GNWT).

*Gulf of Boothia (GB)*

Currently Canada estimates this population at 900 animals. Canada based a population estimate of 333 polar bears on a limited research program of mark and recapture restricted to the western coastal areas. They increased the population estimate to 900 based on the information from local Inuit hunters and an estimate of bears in the central and eastern portions of the area that Canada had not sampled. Although the 900 animal estimate has no statistical level of precision, managers believe it to be more accurate than the previous estimate. The population data is still considered limited and the GNWT rates the population data as poor. Studies conducted in adjacent areas support the boundaries. The status of the population

was stable at the 3-year average harvests and the 1993/94 harvest. Of the 36 bears taken in the 1993/94 harvest, 40 percent were females (Table 3). The number of sport hunts guided for the two seasons between 1992–1994 was 10 and 5, respectively.

The Service revised its proposed finding for this population given the lack of scientific data to support the population estimate and the harvest of females in excess of the quota. Although the GNWT considers the population estimate to be conservative, they substantially increased the estimate based primarily on anecdotal information. NWT polar bear managers rate the population data as poor. The Service believes that the strict requisite that the quota be ''scientifically sound'' has not been met. In addition, the slight but persistent overharvest of females in this population raises concerns as to whether there is effective management action.

*Queen Elizabeth Island (QE)*

Canada estimates the population at 200. Current information is that there are few polar bears in this remote area. The reliability of the data is poor. A likely scenario is that Canada will eventually manage this area as a sanctuary for polar bears. The status of the population was stable at the 5-year and 3-year average of harvests and the 1993/94 harvest. Of the 11 bears taken in last year's harvest, 29.3 percent were females. Only one sport hunt occurred during each of the past two seasons. A Local Management Agreement has not been finalized for this population. In addition, the NWT shares this population with Greenland although the movement of polar bears between the NWT and Greenland is thought to be small (see Parry Channel/Baffin Bay below).

*Parry Channel (PC) and Baffin Bay (BB)*

The Service is considering this area as a single unit in this rulemaking since Canada is still researching what fraction of the Greenland harvest was from either Parry Channel or Baffin Bay populations. Information on the amount of exchange between these populations in Canada and Greenland is important for management since communities in both countries harvest polar bears. Canada considers the current population estimate of 2,470 polar bears preliminary and conservative. Canada obtained the population estimate by pooling the previous estimates for Lancaster Sound (1,657, increased to 2,000, based on sampling bias in the original studies that could have resulted in an underestimate of the population) and NE Baffin (470) populations with the assumption that a distinct population for west Greenland would not be found. The GNWT rates the population data as fair. The status of the population as shown in Table 3 is decreasing for the 5-year and 3-year average of harvests and the 1993/94 harvest. The 1993/94 season's harvest was 200 bears (31.9 percent females). Most sport hunting has occurred in Parry Channel, 28 in 1993/94 harvest season and 24 in 1992/93. Limited guided sport hunts of 5 and 3 occurred in Baffin Bay during the same seasons (GNWT).

According to Born (1995) there is little information available on the take of polar bears in Greenland. There is no quota for harvest of polar bears in Greenland. Regulations prohibit the use of vehicles for the hunt and stipulate that hunters must be citizens of Greenland and hunt or fish full time. As of January 1, 1993, Greenland requires residents to obtain special permits to hunt polar bear. The reporting of take is voluntary, and the system of reporting has not worked reliably for many years. Greenland needs to obtain information on the number and sex ratio of bears taken in all areas and number of animals in the populations to establish a sustainable harvest level of polar bears. There is an ongoing Canadian-Greenland joint study to obtain data to delineate the range and number of bears in the shared populations. A summary of results of a polar bear survey suggests a harvest of 40 to 60 bears each year in West Greenland from the population shared with Canada (PBSG 1995). Recent satellite telemetry data indicates four populations: Lancaster Sound, Baffin Bay, Norwegian Bay, and Kane Basin. Local hunters have requested one more year of capture work to confirm the current estimates for Baffin Bay. At least two more years of mark-recapture work will be required to provide estimates for the Lancaster Sound, Kane Basin, and Norwegian Bay populations (GNWT 1996). Management agreements have been developed for these areas between GNWT and the local communities.

*Foxe Basin (FB)*

Canada concluded an 8-year mark-recapture and telemetry study of movements and population size in 1992. They believe the population estimate of 2,020 is accurate as they included the entire area in the marking effort. Polar bears were concentrated on the Southampton Island and Wager Bay areas during the ice-free season. But, significant numbers of bears were found throughout the other islands and coastal areas. Because Canada believes the previous harvest quotas to have reduced the population from about 3,000 in the early 1970's to about 2,000 in 1991, they incrementally reduced the harvest quota to levels that will permit recovery of this population. The reduction process is described in the NWT Local Management Agreements between the Inuit communities that share these polar bears. The GNWT rates the population data as good. Table 3 shows the status of the population as decreasing for the 5-year and 3-year average of harvests and the 1993/94 harvest. Of the 100 bears taken in last year's harvest, 48.5 percent were females.

The NWT shares the population with Quebec where the legal basis for regulating polar bear are the Wildlife Conservation and Management Act, 1983; the Order in Council 1 3234, 1971; and the James Bay International Agreement, 1978 (GNWT). Inuit and Indians are allowed to hunt polar bears from three different populations, based on the ''guaranteed harvest'' levels determined for the James Bay Agreement, as long as the they respect the principle of conservation (PBSG 1995). The guaranteed harvest levels are determined between the user groups and the Government of Quebec based on harvest records between 1976 and 1980. The harvest levels set are 22, 31, and 9 for populations shared in Southern Hudson Bay, Davis Strait, and Foxe Basin. The Inuit have agreed with the harvest levels, while negotiations are occurring with the Crees. If the Inuit exceed the ''guaranteed harvest'', which is uncommon, there is no penalty. The number and sex of polar bears in the harvest are monitored, with age determined on many of them. There has been, however, some concern expressed over the inconsistencies in harvest data. As previously mentioned, Native hunters have agreed to protect females with cubs, their cubs, bears moving into dens, and bears in dens but the collection of harvest information is sporadic and the effectiveness of the protection measures cannot be fully determined.

*Davis Strait (DS)*

Canada estimates the population at 1,400, based on field work conducted during the spring from 1976 through 1979. Traditional knowledge observations suggest that the population may have increased since 1979. These include that: (a) hunters from Pangnirtung reported larger numbers of bears in recent years and in 1994 took their entire quota in less than 2 days; (b) hunters from the Labrador Inuit Association reported seeing an

increased number of bears in the last several years; (c) hunters from Iqaluit report they harvest the highest proportion of males of any settlement in the NWT due to high densities of bears encountered; and (d) hunters from Lake Harbour reported a higher rate of encounters with polar bears in recent years. Observations made by biologists also support an increase in population size: (a) during surveys conducted in the fall of 1992 and 1993, observers found high densities of bears on the Cumberland Peninsula, Baffin Island; (b) the number of bears captured per hour of search time during 1991–94 on the Labrador coast almost doubled from 1976–79; (c) during the above surveys conducted in the 1990's, observers saw a large proportion of old adult males (such sightings would not occur in an overharvested population where the harvest was selective for males); and (d) satellite tracking data from 1991–94 indicate that a large proportion of the population is offshore in the pack ice during the spring and would not have been included in the capture and tagging as part of the 1980 population estimate.

The GNWT rate the population estimate data as fair. Based on population modeling that indicates the population would need to be at least 1,400 to sustain the present annual kill of 58 polar bear and observations by hunters and biologists, the 1995 PBTC supported revision of the population estimate from 950 to 1,400. Canada will need to do further work to resolve the status of polar bears in this population. A joint resolution was signed by Quebec and GNWT supporting a co-operative inventory of this population as a high priority. Table 3 shows the status of the population as stable for the 3-year average of harvests and the 1993/94 harvest. Of the 58 bears in last year's harvest, 40.6 percent were females.

The NWT shares the Davis Strait population with Quebec, Newfoundland and Labrador, and Greenland. For a discussion of Quebec, see Foxe Basin above. In Newfoundland and Labrador, the legal basis for regulating polar bear is the Wildlife Act, 1970. The current hunting season is limited to residents of the Torngat Electoral District on the northern Labrador coast, with no distinction made between Natives and non-Natives. To maintain consistency with the International Agreement, the Labrador Inuit Association issues the tags, with unused tags being accounted for. Land claim negotiations that may affect how polar bears are managed in Newfoundland and Labrador are currently underway. In typical years Greenland harvests no polar bears from the Davis Strait population. In some years, however, when ice blows onto southern Greenland, hunters take an average of two bears in Greenland. For additional discussion on Greenland's program, see Parry Channel/Baffin Bay above.

Southern Hudson Bay (SH)

Canada considers the population estimate of 1,000 to be conservative. They base the estimate on a 3-year study mainly along the Ontario coastline of movements and population size using telemetry and mark-recapture. Since Canada did not include a portion of the eastern and western coastal areas in the study area, they increased the calculated estimate of 763 bears to 1,000. In addition, because of difficulties locating polar bears inland from the coast in the boreal forest, the inshore was under-sampled. The study confirmed the population boundary along the Ontario coast during the ice-free season but showed the intermixing with the western Hudson Bay and Foxe Basin populations during the months when the bay is frozen over. The GNWT rates the population data as fair. Table 3 shows the status of the population as decreasing for the 5-year and 3-year average harvests, but as stable for the 1993/94 harvest. Of the 45 bears taken in last year's harvest, 33.3 percent were females.

The NWT shares this population with Quebec (see discussion under Foxe Basin) and Ontario. In Ontario, polar bears are protected under the Game and Fish Act, 1980. Treaty Indians are allowed to hunt polar bears with an annual permissible kill of 30 animals (GNWT). Ontario has supported the adoption of guidelines for dividing the quota for polar bear populations shared with the NWT and Quebec, but there is no joint management agreement. If hunters exceed the quota, which is uncommon, they are encouraged to count the excess polar bears against the next year quota. There are no officers located in the villages where polar bears are hunted. It was reported at the 1994 PBTC meeting that hunters are not reporting all known kills, resulting in incomplete data. Ontario does not specifically protect bears in dens and females with cubs. Although the take of such animals is believed to be rare, the omission in Ontario law to implement the resolution has been a point of concern to polar bear biologists and managers (PBSG 1995).

*D. CITES and Other International Agreements and Conventions*

1. Finding

The MMPA requires that the Service find that the export from Canada and subsequent import into the United States are consistent with CITES and other international agreements and conventions. Based on the discussion below, the Service finds that the provision of CITES will be met for the export and import of polar bear trophies taken in Canada. The Service discussed the International Agreement previously in this final rule. At this time, the Service is not aware of any other agreements or conventions that the Service needs to consider.

2. CITES

CITES is a treaty established to protect species impacted by international trade. Canada and the United States, along with 132 other countries, are Parties to CITES. The polar bear has been protected under Appendix II of CITES since 1975. Appendix II includes ''species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival'' (Article II of CITES). A CITES export permit must accompany each shipment from the country of origin. A country can issue an export permit for dead specimens for any purpose as long as the scientific authority determines that the shipment will not be detrimental to the survival of the species and the management authority determines that the specimen was obtained legally.

Canada controls the export of polar bear trophies based on the harvest of polar bears under quotas enforced by legislation and co-management agreements. In the NWT, only the DRR Headquarters in Yellowknife and its Regional Offices can issue CITES permits for polar bears and polar bear products. Another Canadian province or territory can issue a CITES permit for a polar bear product originating in the NWT if the product was exported from the NWT with a Northwest Territories Wildlife Export Permit into that province or territory. Customs Canada must validate the CITES permit upon export.

For import into the United States, all wildlife and wildlife products requiring a permit under CITES and the MMPA must meet inspection and clearance requirements as outlined in regulation (50 CFR Part 14), including entry through one of the ports designated for

wildlife import and completion of a Wildlife Declaration Form (3–177).

*E. Illegal Trade in Bear Parts*

1. Finding

The Service finds that the import of sport-hunted polar bear trophies from Canada into the United States is not likely to contribute to the illegal trade in polar bear parts and/or the illegal trade in parts of all other species of bears, when such activity is done in accordance with the Service's regulations. The permittee must make an appointment with Service personnel at a designated port for Wildlife at least 48 hours prior to import for inspection and clearance under 50 CFR § 14.52. He or she must arrange for a Service Officer to affix a permanent tag to the trophy and mark hard parts upon import. The permittee also must import all parts of a single trophy at the same time. The Service will not consider exceptions to the designated port requirement except for the import of full mount trophies. Trophies may not be sent through the international mail. If the original tag is broken during tanning or is lost, the permittee must contact the Service to get the polar bear hide or mount retagged.

To ensure that the gall bladders of polar bears taken by U.S. hunters after the date of this final rule do not enter into trade, all applicants must certify that the gall bladder, including its contents, was destroyed.

2. Trade in Hides and Other Hard Parts and Tagging Requirement

Participants in the 1993 PBSG meeting reported that the fur market is currently glutted, resulting in low prices for polar bear pelts on the open market. A legal trade exists in Greenland that assists in marketing polar bear pelts for local communities. In 1992, the tannery purchased 60 hides. Thirty of these went to Denmark (PBSG 1995).

The MMPA prohibits, with limited exceptions, the import of polar bear parts into the United States as well as the harvest and trade of polar bears and polar bear parts in the United States. The MMPA restricts the take of polar bears to any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean, provided such taking is not accomplished in a wasteful manner and is for subsistence purposes or is done for purposes of creating and selling authentic native articles of handicrafts and clothing.

All polar bear hides and skulls taken as part of the Native subsistence harvest in Alaska must be tagged within 30 days of harvesting the polar bear. Only Service personnel or authorized Service representatives (e.g., Native residents of the community) may tag the polar bear parts. The skin and skull of an animal must accompany each other when presented for tagging. Tags are attached to the skins and skulls in such a manner as to maximize their longevity and minimize any adverse effect to the appearance of the specified parts, or the resulting handicraft. Tags must remain affixed to the skin through the tanning process and until the skin has been severed into parts for crafting into handicrafts or for as long as practical during the handicrafting process. If the tag comes off of the specified part prematurely, the person in possession of the part has 30 days to present the part and broken tag to the Service or the Service's local representative for retagging.

As previously described, the NWT tag applied to a polar bear hide is removed either at the time of tanning or upon export. Therefore, once imported, a person could not distinguish raw or tanned hides, rugs, and mounts of Canadian sport-hunted polar bears from illegally imported Canadian polar bears or untagged Alaskan polar bear hides that may have been illegally acquired or transported. Thus, this rule is requiring the permittee to present the trophy to the Service for tagging and marking upon import. The Service Officer will affix a permanent-locking tag to all sport-hunted polar bear trophies including raw (untanned) hides, tanned hides, and prepared rugs and mounts and mark the skull of the polar bear, as well as other hard parts with the tag number of the accompanying polar bear hide. The permittee must ensure the tag and marks remain on the trophy and trophy parts indefinitely.

The Service has experience with tagging programs for polar bear, walrus, and sea otter taken in the Native subsistence harvest in Alaska and for CITES regulated fur-bearing species, including brown bear, bobcat, river otter, and lynx. Prior to making a decision on the type of tag to be used for sport-hunted polar bears, the Service considered: (1) information from Service personnel experienced with other tagging programs; (2) comments from taxidermists and tanners; (3) the condition of the trophy upon import (i.e., untanned hide, tanned hide, finished rug or mount); (4) the readability of identification marks on the tag; (5) the ability to replace lost tags; and (6) the effect of the tag on the overall appearance of the trophy. Based on these considerations, the Service will affix a plastic tag to the hide in the belly or flank area of all raw hides, rugs, or mounts in an area that is least disruptive to the taxidermy process, more likely to be concealed by the longer hair in these areas, and easily accessible to examination.

3. Trade in Gall Bladders

There is some illegal trade in bear parts in Canada, but the extent is unknown. While British Columbia, Alberta, Newfoundland and Labrador, and Manitoba prohibit the trade in bear parts, it is still legal to sell bear parts in Ontario, Quebec, Saskatchewan, and the NWT.

There is a diversity of opinion on trade in polar bear gall bladders. Resolution 5 of the 1993 PBSG meeting recommended that each party consider restricting the traffic in polar bear gall bladders. This was done in recognition that worldwide trade in bear parts, particularly gall bladders, threatens the survival of several species of bear, and that the legal availability of gall bladders of any species of bear makes it impossible to control the illegal trade, encouraging further illegal take of all species of bears, including polar bear (PBSG 1995). Canada's PBTC endorsed the resolution which allows each party to make its own decision. The PBTC recommended the PBAC discuss the issue and consider recommending a ban on trade of gall bladders from all bear species. Although people can sell legally harvested bear gall bladders in the NWT, the GNWT is reviewing the practice. Between 1992 and 1994, the GNWT issued export permits for 61 polar bear gall bladders.

There is an absence of documentation substantiating the extent of the demand for polar bear gall bladders. There is anecdotal information that suggests there is not an extensive commercial demand for polar bear gall bladders, possibly due to a fishy odor. On the other hand, in 1992 U.S. law enforcement agents in Alaska documented the first case of the sale of polar bear gall bladders (Schliebe et al. 1995).

Regardless of the existing legal trade in some Canadian provinces and territories, as well as the relative demand that may exist for polar bear gall bladders, the Service believes that the safeguards imposed in this rule at 18.30 (a)(1)(iv) and (e)(7) & (8) will ensure that the import of legally taken polar bear trophies does not contribute to illegal trade in bear parts. The required certification that the gall bladder and its contents were destroyed and the strict tagging requirements stipulated by this rule are effective

deterrents to the illegal trade in bear parts.

*F. Import of Pregnant or Nursing Animals Under the MMPA*

1. Finding

The Service finds that provisions of section 102(b) of the MMPA that prohibit the import of pregnant and nursing marine mammals will be met under the application requirements, issuance criteria, and permit conditions placed in the final regulations. The applicant must certify that the bear was not pregnant at the time of take and include relevant documentation with applications for a permit to import female bears or bears of unknown sex to indicate that the bear was taken legally and, for such bears taken prior to January 1, 1986, other documentation to indicate that the bear was taken at a time or place when it could not have conceivably been pregnant near term.

For a bear taken prior to the 1996/97 NWT hunting season, the applicant must provide a certification and any other documentation that may be available to demonstrate a female polar bear, a bear of unknown sex, or a male bear that is less than 6 feet in length was not taken from a family group (i.e., nursing). The regulations also provide for import permits to have a condition that the polar bear at the time of take was not pregnant near term, was not a dependent nursing bear or a female with such offspring (i.e., in a family group), and was not moving into a den or already in a den. These measures ensure that the prohibitions of Section 102(b) of the MMPA will not be violated, as discussed further below.

2. Discussion of Pregnant or Nursing

Section 102(b) of the MMPA prohibits the import of any marine mammal, except under a permit for scientific research or enhancing the survival or recovery of a species or stock, if such marine mammal was pregnant or nursing at the time of take. Since Congress did not specifically exclude the issuance of polar bear import permits from this prohibition, the Service considers the requirement to apply.

In the proposed rule (60 FR 36382), the Service requested comments on the following options to ensure that the requirements of section 102(b) of the MMPA are met prior to issuing a permit for the import of polar bear trophies taken in the NWT as follows: (1) have the GNWT certify that at the time of take the bear was not pregnant, was not a nursing cub, and was not a mother with cubs based on information presented to the DRR office; (2) condition the import permit that the permittee must certify at the time of import that at the time of take a female bear was not pregnant or a mother with cubs, and a young bear was not nursing; and/or (3) include issuance criteria that the Service would not issue permits for female bears taken during the month of October and bears taken while in family groups.

Based on the comments received, the Service adopted a modification of proposed actions (2) and (3). In the proposed rule, the Service noted two timeframes when it might be difficult to ensure the provisions of section 102(b) would be met. First, it would be difficult to know if a polar bear was pregnant in any months preceding denning. Polar bears mate in spring, become implanted in late September and usually start building dens in late October and early November. Cubs are typically born at the end of December. As was pointed out by the MMC, ''* * * determining whether a female is pregnant would be difficult early in a pregnancy and, very early, might require analysis of hormones in the blood or histological examination of the ovaries and uterus. It is unlikely that either the hunter or the guide would be qualified, or would have the equipment or material necessary to do such analyses.'' Because of this concern, the Service reviewed the legislative history of the MMPA for information on the meaning of the term ''pregnant''. In 1972, when the MMPA was enacted the House Conference Report (H.R. Rep. Conf. No. 92–1488, 92d Cong., 2d Sess. 24 (1972)) indicates that the conferees discussed the provision of prohibiting the import of pregnant marine mammals. The report states, ''It is known that some marine mammals are technically pregnant almost year-round, and in the cases of others, it is extremely difficult for even trained observers to detect pregnancy except in the latter stages or in seasons when such animals are known to give birth. It is the intent of the conferees that the term ''pregnant'' be interpreted as referring to animals pregnant near term or suspected of being pregnant near term as the case may be.''

The GNWT currently prohibits the hunting of bears constructing dens or in dens. Since the proposed rule, the Service has learned that the GNWT affords such protection to female bears, in part, by prohibiting the hunting of female bears prior to December 1 in areas where denning occurs. These measures effectively protect female bears pregnant near term.

It is unclear when the GNWT put protection measures in place for denning bears. In a December 20, 1996, memo to the Service, it was stated that, ''For more than ten years, the Northwest Territories have had regulations in place protecting polar bears at or constructing dens'' (GNWT). Therefore, for female polar bears or bears of unknown sex sport hunted in the NWT prior to January 1, 1986, the Service will require an applicant to provide documentation that the polar bear was not pregnant near term at the time of take. This documentation could be a copy of the travel itinerary or hunting license which shows the date(s) or location of the hunt, as proof that the bear was taken during the time period when the bear could not conceivably be pregnant near term or from an area that does not support maternity dens. The Service selected the date of January 1, 1986, since bears typically give birth prior to January 1, and 1986 represents the ten year period of protection referred to in the memo.

The second timeframe of concern was for nursing bears (mother and young). Bears typically nurse until they are approximately 2.0 to 2.5 years of age at which time they are about the same size as the mother. Polar bears nearing the time when they are weaned would be difficult to identify as nursing. At the time of the proposed rulemaking and as discussed previously, the NWT wildlife regulations protect cubs of the year, one-year-old cubs, and mothers of bears in these two age groups. However, in some areas, the regulations do not protect two-year-old bears or mothers of two-year-old bears. Effective with the 1996/97 NWT polar bear hunting season, all management agreements were changed to protect bears in family groups (Ron Graf, DRR, personal communication). Although sport hunters tend to target large, older male polar bears it is possible that 2-year-old bears or mothers of such bears were legally sport hunted in the NWT prior to the management agreement changes. Therefore, to ensure that the MMPA prohibition on the import of nursing marine mammals is met, the Service will require applicants who took a bear prior to the 1996/97 NWT hunting season to certify that the bear was not hunted from a family group and provide any available documentation that a female bear, a bear of unknown sex, or a male bear that is less than 6 feet in length (from tip of nose to the tail) was not taken from a family group. Such documentation may include certification from the DRR based on their harvest records that the bear was not taken as part of a family group.

*G. Finding for Bears Taken Before the 1994 Amendments*

1. Finding

The Service will issue permits for polar bears taken from approved populations in the NWT between December 21, 1972, and April 30, 1994, the date the MMPA was amended, when the issuance criteria of § 18.30(d) and the conditions of § 18.30(e) are met. The Service proposed that bears taken in all 12 populations in the NWT would be eligible for import permits under an aggregate finding, but now the Service finds that pre-Amendment bears must have been taken from approved populations as discussed below. The Service will accept several different forms of documentation, as described in § 18.30(a)(4) as evidence of legal take. The Service notes that documenting the polar bear was legally harvested in Canada by the applicant or by a decedent from whom the applicant inherited the trophy may be more problematic for polar bears taken between late 1972 to 1976 since records maintained by DRR start from the mid 1970's. The application information needed to determine the bear was not pregnant or nursing at the time of take is the same as for bears taken after April 30, 1994. This is to address the factors set forth in § 18.30(a)(7) and (8).

2. Discussion of Bears Taken Before the 1994 Amendments

Section 104(c)(5)(A) includes polar bears taken, but not imported, prior to the 1994 Amendments. The Service proposed (60 FR 36382) to issue an aggregate finding covering the NWT historic sport-hunting program for each year starting in late 1972 to the present for the following reasons: (1) Canada is a signatory to the 1973 International Agreement on the Conservation of Polar Bears that came into effect on May 26, 1976; (2) since 1949 Canada has restricted hunting of polar bears to Native people; (3) the GNWT has managed polar bears under a quota since 1968; (4) the GNWT has maintained a data collection and monitoring program on the polar bear harvest in its territory since the 1976/77 harvest season; (5) the DRR has demonstrated a progressive management program for polar bear that includes scientific research and traditional knowledge; and (6) the 1994 Amendments do not require the evaluation of Canada's past polar bear management history.

Based on comments received and a review of the MMPA, the Service finds pre-Amendment bears must have been taken from approved populations. The ''grandfather'' provision that allows permits to be issued for pre-Amendment trophies is tied to the same statutory criteria that apply to the import of polar bears taken after the passage of the 1994 Amendments. Section 104(c)(5) of the MMPA allows the issuance of import permits for polar bear trophies taken before April 30, 1994, *if* the Secretary makes the necessary findings that, *inter alia*, the Canadian management program is consistent with the International Agreement and that ''the affected population stock'' is managed under scientifically sound quotas ''at a sustainable level.''

For those pre-Amendment trophies which were taken from currently deferred populations, the Service will consider substantial new scientific and management data as it becomes available. If, after public comment and consultation with the MMC, the Service is able to approve the population at some future time, the regulations would be amended to add that population to the list of approved populations in § 18.30(i)(1). Then, permits could be issued for the import of pre-Amendment trophies of polar bears taken from the newly approved population.

Background

On January 3, 1995, the Service published a proposed rule in the Federal Register (60 FR 70) to establish application requirements, permit procedures, issuance criteria, permit conditions, and a special permit issuance fee. The Service published a second proposed rule (60 FR 36382) on July 17, 1995, on the legal and scientific findings that the Service must make before issuing permits for the import of polar bears trophies. A notice (60 FR 54210) to reopen the public comment period for 15 days was published on October 20, 1995. The Service received 61 comments from the public, including 7 form letters from hunters, 8 humane organizations, 11 hunting organizations, 23 individuals, 3 Native groups in Alaska, 3 businesses, and 7 governmental agencies.

Summary of Comments and Information Received; General Comments

Several respondents were concerned with the length of time it was taking to finalize the rulemaking. One thought the National Environmental Policy Act (NEPA) was inapplicable and was causing undue delay.

*Response:* The Service made every effort to complete this rule in a timely manner. The rulemaking process requires the Service to review and give due consideration to public comments. NEPA requires the Service to consider the environmental effects of proposed actions so the Service can make a fully informed decision and assure the public that it has considered all significant environmental concerns. Since the Service conducted the rulemaking and NEPA review at the same time and since the Service made a Finding of No Significant Impact under NEPA which precludes the need to conduct an Environmental Impact Statement, the NEPA review did not delay the Service's rulemaking.

Comments on Application Requirements and Permit Procedures

*Issue 1:* Several respondents encouraged the Service to make the permit process more efficient and user friendly. Some suggested the Service not require some of the proposed application information.

*Response:* The Service agrees the permit process should be easy to understand and is developing an application package for the import of polar bear trophies. Once available, the Service welcomes comments on clarity of information. Individuals currently on the Service's polar bear mailing list will be sent a copy of this package.

After further consideration, the Service revised the regulations on application requirements. The Service is no longer asking for the name and address of the exporter since the information will be on the CITES export permit. Nor will the applicant need to give the age of the polar bear as he or she generally will not know this information at the time of import. The Service does not agree with some of the comments and will continue to require the applicant to provide the sex of the polar bear and the size of the hide or mount. The Service believes it is important the permit describe the items being imported, to facilitate inspection and clearance of the trophy into the United States.

*Issue 2:* The Service received several comments on the proposed definition of ''sport-hunted trophy'' in § 18.30(b). One respondent urged the Service to stress that the permittee can use the imported trophy only for non-commercial purposes. Another suggested the Service expand the definition to include any part that would normally constitute polar bear trophy items, such as the baculum and bones.

*Response:* The Service agrees and revised its definition. The definition allows the trophy to be finished or unfinished, but requires the items be suitable for the creation of a mount, display, or rug. It does not include: (1)

unspecified polar bear parts and internal organs that may be of curiosity but not traditionally kept as trophy items; (2) items that are purchased in Canada; or (3) articles of clothing or ornamentation such as pants, hats, shoes, gloves or jewelry, or other finished polar bear products such as fishing lures or accessories.

*Issue 3:* One respondent correctly noted that the Service mistakenly proposed in § 18.30(c) that the MMC must review each polar bear trophy application. The law only requires consultation with the MMC on a series of general findings, not on each permit application.

*Response:* The Service agrees that Section 101(a)(1) of the Act specifically exempts review by the MMC of each application for a permit to import a sport-hunted polar bear trophy and revised the regulations to reflect this.

*Issue 4:* One individual requested the Service set a timeframe for the review and approval of applications.

*Response:* The Service believes the time already specified in the regulations at 50 CFR § 13.11 is appropriate. The permit applicant should allow at least 90 days prior to the requested effective date of a permit to be issued under the MMPA. The Service processes all applications as quickly as possible, but notes that actual processing time varies based on available resources and number of applications received in a period of time. Applicants can facilitate the process by ensuring that all information and documentation submitted in their application is complete.

*Issue 5:* Two respondents objected to the proposal to publish a notice of each permit in the Federal Register.

*Response:* Section 104(d)(2) the MMPA requires the Service to publish notice of each application in the Federal Register. When Congress added section 104(c)(5) to the MMPA to allow for issuance of permits to import polar bear trophies, it did not exempt this type of permit from the public notice and comment procedures required under section 104(d) of the MMPA.

*Issue 6:* One respondent recommended the Service delete the issuance criteria listed in § 18.30(d)(4), (5), and (6) on Canada's sport-hunting program, scientific quotas, and consistency with CITES since the Service was making generic findings.

*Response:* Although the Service recognizes that some of the criteria will be met through generic findings, it continues to believe the regulations must contain all issuance criteria. To assist the public in understanding the requirements, the application package will provide information explaining issuance criteria and findings. Applicants may cite the generic findings made in this rule on the consistency of the Canadian program with the International Agreement and the sustainable management of the particular population from which the trophy was taken. However, for polar bears taken from populations other than those approved in the final rule, the applicant should submit data on each of the criteria so that the Service can determine whether the new data are sufficient to allow the Service to make affirmative findings under Section 104(c)(5)(A) of the MMPA.

*Issue 7:* Two individuals indicated that the import permit needs to be valid for longer than one year since taxidermy work cannot be done in Canada in that time interval. In addition, there should be a provision to extend the permit without payment of another fee.

*Response:* The Service believes that a one-year duration of a permit should be adequate time to make the shipping arrangements and import a trophy since the permit is required to import the trophy, not to hunt the polar bear. The permit applicant can apply for the import permit at any time as best suits the anticipated completion date of the taxidermy work in Canada. The Service continues to believe the standard processing fee in 50 CFR § 13.11(d)(4) should apply to renewal of permits, including polar bear trophy import permits. This is a permit administration fee to help defray the processing costs, not the one-time polar bear issuance fee of $1,000.

*Issue 8:* Some respondents thought the proposed fee rate for the issuance of polar bear permits was reasonable while others were concerned the proposed fee was excessive. Several respondents were concerned about the Service's use of the fee and its accounting of disbursements.

*Response:* After consideration of the comments, the Service retained the issuance fee at $1,000, as proposed.

Congress specifically wrote the law (section 113(d)) so the Service would use the funds from the issuance fee to further the purposes of the International Agreement for the conservation of polar bear populations shared between the United States and the Russian Federation. An issuance fee of less than $1000.00 (compared to the projected number of import permits) would not produce sufficient revenue to implement the conservation provisions of Sections 104(c)(5)(B) and 113(d).

The Service, working with the State Department, the MMC, and the State of Alaska, is working with the Russian Federation to coordinate measures for the conservation, sustainable use, protection of habitat, and study of the Alaska-Chukotka shared polar bear population. The Service anticipates they will fund the following kind of activities: development of a harvest monitoring management program; collection of specimen material; conducting aerial den or population surveys; providing technical assistance for enforcement programs; and development of conservation educational materials.

The Service will use monies from issuance fees to fund research and conservation projects as outlined by the MMPA and not to process polar bear import permit applications. The Service will provide periodic progress reports to Congress on the effectiveness of the implementation of the International Agreement and of the progress made in the cooperative research and management programs with the Russian Federation under section 113(c) and (d) of the MMPA.

*Issue 9:* One respondent urged the Service to define ''significant adverse impact'' in its final rule under § 18.30(h) on scientific review.

*Response:* The Service decided not to develop a regulatory definition of ''significant adverse impact'' at this time, but did give consideration to its meaning as discussed in the section on scientific review above.

Comments on Consideration of Population Stocks Under the MMPA

*Issue 1:* Many respondents questioned the management of polar bears in Canada as 12 separate population stocks.

*Response:* After review of the comments and further consideration, the Service continues to conclude that each of the 12 polar bear management units in Canada is a separate population stock as the MMPA defines the term. The Service believes that this designation ensures the maintenance of the polar bear throughout its range in Canada. This decision was made by applying sound biological principles to the examination of polar bear biology and reviewing the data from scientific research. A complete discussion of the Service's position on this issue is provided under the heading ''Consideration of Population Stocks under the MMPA.''

*Issue 2:* Although the MMC agreed that in the face of uncertainty it generally is prudent to manage based on local populations or subpopulations, they pointed out that splitting a discrete population into smaller sub-units could lead to a positive finding for sub-units

that would not be reached if the population were considered as a whole.

*Response:* The Service agrees with the MMC, and notes Canada's polar bear management program recognizes that there may be adverse consequences if Canada defines and manages a population too broadly or too narrowly. For example, when scientific data showed that the recruitment level of the Viscount Melville population was substantially different from other populations in Canada, the GNWT changed its management of polar bears in this population. If the GNWT had lumped this population with other populations and managed them as one, the number of polar bears would have continued to decline in Viscount Melville.

Comments on Canada's and NWT Polar Bear Management Programs

*Issue 1:* Many respondents praised the Canadian polar bear management program as a model of good conservation and co-management and asked the Service to defer to Canada's expertise.

*Response:* The Service agrees that Canada has established an effective management program for polar bear, but the MMPA requires the Service to independently make the findings set out by Congress.

*Issue 2:* Several respondents questioned Canada's ability to monitor and enforce their polar bear sport-hunting program.

*Response:* After considering the comments, the Service continues to find that Canada has an effective sport-hunting program. The Service does not agree with the comment that Native land claim agreements will supersede NWT and Canadian law. The NWT regulations implement the agreements and apply to all hunters. The agreements include actions necessary to fulfill the provisions of the International Agreement. Some agreements have been in place a number of years (e.g., the Inuvialuit Land Claim Agreement has been in place since 1984) and have been shown to be effective in developing and implementing co-operative management of polar bear and other wildlife resources.

Comments on the Harvest of Polar Bears

The Service received many extensive and contradictory comments on the role of sport hunting in the harvest and management of polar bears. Respondents disagreed on the significance of cannibalism by males; whether sport hunting has an effect on the total harvest of polar bears; the significance of sexual competition; the potential consequences of targeting older, adult male bears; and the social and economic effects of sport hunting on Native peoples.

*Response:* The Service must consider not whether sport hunting should occur or is beneficial but whether Canada has a monitored and enforced hunting program that is consistent with the International Agreement and is based on scientifically sound quotas that will ensure the maintenance of populations at a sustainable level. Thus, the Service believes it is not necessary in this forum to respond to the detailed comments debating the role of sport hunting. The Service recognizes that, under certain conditions, sport hunting can be a useful management tool. Canada has elected to incorporate it into their total management program for polar bears. The selective harvesting of males is a part of the Canadian model of management and is based on biological and management considerations, not on the relative merits of sport hunting.

Comments on Legal and Scientific Findings

*Issue 1:* The MMC thought the regulations should permanently prohibit the import of polar bears taken in disapproved populations. They wrote the Service that ''at the absolute minimum, the Service should require the applicant to demonstrate that the trophy to be imported was taken from a population for which the Service has made a current affirmative finding.''

*Response:* The Service has carefully considered the comments received and agrees that only polar bear trophies which were taken from currently approved populations should be eligible for import at this time. The Service will consider issuing import permits for polar bear trophies taken from currently deferred populations if, after notice and opportunity for public comment and in consultation with the MMC, the Service is able to make all of the required findings for the deferred population and add that population to the list of approved populations at § 18.30(i)(l).

*Issue 2:* Several respondents thought the proposed system to review and update the status of populations would delay the subsequent approval of populations that the Service had disapproved. The CWS asked that the system retain flexibility so as to allow findings to be reviewed and updated regularly.

*Response:* The Service agrees and revised the regulations to look at the overall sport-hunting program. The Service removed the requirement that the population status as reported by the DRR had to be either ''+'' or ''o'' for the average of the past three harvest seasons. For additional discussion of the method of approving populations, see the previous section on scientifically sound quotas and maintenance of sustainable population levels.

*Issue 3:* One respondent was concerned that if the population status changed for any particular year (i.e., an approved population became disapproved), the Service would be required to confiscate already imported trophies.

*Response:* The Service would consider legally imported trophies from approved populations to be legal even if the population was subsequently disapproved based on new information.

*A. Comments on Legal Take*

One respondent commented that the proposed rule placed the authority to prove legal taking of a bear with the GNWT.

*Response:* The Service retains the responsibility to decide for each permit application whether the hunter legally harvested the polar bear in the NWT. The finding of legal take consists of two decisions by the Service: (1) the aggregate finding on Canada's program as given in this rule and (2) the finding for each permit application. The type of documentation the applicant must provide is given in the regulations at § 18.30(a)(4) and is based on provisions in Canada's management program.

*B. Comments on the International Agreement*

*Issue 1:* The MMC commented it is an open question whether the International Agreement is self-executing. International law binds the Parties to the provisions of the International Agreement, whether or not a Party has domestic legislation to fully implement the Treaty's provisions.

*Response:* The Service believes the International Agreement is not self-implementing, but agrees with the MMC that international law binds the Parties to its provisions. In any event, the Service believes that the GNWT program for the management of polar bears is consistent with the International Agreement.

*Issue 2:* The MMC asked which exemption in Article III.1—either (d) or (e)—the Service considers to authorize a sport hunt by non-nationals.

*Response:* Although exception (e) is the clearer authority, the Service interprets both exceptions to allow sport hunts under specified conditions discussed earlier in the section on the International Agreement. Exception (d) allows for sport hunts in Canada

because of Canada's declaration. Exception (e) allows sport hunts by any Party. So as referenced in Canada's declaration, both (d) and (e) permit a sport hunt based on scientifically sound quotas under Canada's laws.

*Issue 3:* Two respondents provided opposing views as to whether exceptions (d) and (e) are more appropriately interpreted by plain meaning or consideration of negotiating history.

*Response:* The Service agrees with the comment that negotiating history may be consulted where the provisions of a treaty are unclear, and that the plain meaning interpretation must be used where the provisions are clear.

*Issue 4:* The MMC thought the Service should consider whether exception (d) is limited to taking by local people as a literal reading would suggest, or whether it allows taking by non-nationals, non-Inuit, or non-Indian hunters under the guidance of a Native hunter, as the negotiating history may support. One respondent argued that under the plain meaning of the phrases of the exception hunting is limited to only local people in contiguous land areas.

*Response:* The Service does not believe the scope of this exception is limited to actual taking by local people in Canada based on Canada's declaration to the International Agreement. Since persons may disagree on the interpretation of the generalized words in the exception, the Service believes it is necessary to look to the negotiating history as discussed previously.

*Issue 5:* The MMC and two respondents gave widely divergent interpretations of exception (e). One respondent suggested the exception imposes a geographic restriction rather than a restriction on the class of persons. Another thought the interpretation given by the Service and the Baur Report was overly broad and overlooked the consequences.

*Response:* The Service agrees with the MMC that the best interpretation of exception (e) is that a Party nation may authorize taking by any person, including a non-national, as long as the take occurs in an area where nationals have hunted by traditional means. A discussion of traditional hunting areas can be found in the section on the International Agreement. Since the language of this exception is open to different interpretations as shown by the range of comments received, the Service examined the negotiating history of exception (e) as discussed earlier.

*Issue 6:* One respondent suggested that Canada's polar bear sport-hunting program is in violation of the International Agreement because Canada filed its declaration after the Treaty was signed and the declaration contravenes the language of the Treaty.

*Response:* The Canadian government submitted its declaration when it deposited its instrument of ratification for the Agreement in 1976 (Baur 1993). The declaration provides Canada's interpretation of the phrases ''traditional rights'' and ''in accordance with the laws of that Party'' from the International Agreement. Moreover the Service is not in a position to criticize Canada's interpretation of the International Agreement or Canada's domestic implementation of the treaty. It is the Service's judgment that Canada has the best polar bear management programs in the world. The Service finds that the GNWT management program for polar bears as well as the Canadian interpretations of the International Agreement are consistent with the purposes of the International Agreement.

*Issue 7:* Many respondents disagreed with the Service's interpretation of ''token'', arguing that Canada had not defined the term and Canada should determine the meaning. On the other hand, the MMC thought the Service should define the term more conservatively.

*Response:* After considering comments and consulting further with the CWS, the Service decided not to independently define the phrase ''token sports hunt'' in terms of percentage of the quota, but to accept Canada's interpretation that token refers to sport hunts that are within conservation limits.

*Issue 8:* The Service received two opposing comments on the Resolution on Special Protection Measures to the International Agreement that calls for the protection of females with cubs and their cubs.

*Response:* The Service believes the Resolution is complementary to the objectives of the International Agreement, and failure to comply with the Resolution results in failure to meet those objectives. Therefore, the Service will continue to consider whether populations have provisions to protect females with cubs and their cubs prior to deciding whether to approve polar bear populations for the import of trophies into the United States.

*Issue 9:* Several respondents thought that hunts would be in violation of the International Agreement if (1) hunters used aircraft, snow machines, or boats to reach base camps in areas beyond where nationals traditionally hunted or to areas that could not be reached by Native hunters on dog sleds or (2) hunters used aircraft to assist in locating or taking bears, or selecting base camps within areas of high polar bear densities.

*Response:* After further consideration, the Service continues to find that Canada's polar bear management program, including the use of aircraft, snow machines or boats to reach base camps, meets the provisions of the International Agreement. A discussion that addresses the concerns raised by these comments is given in the section on the International Agreement above.

*Issue 10:* The MMC pointed out that section 102(a)(1) of the MMPA prohibits any person subject to U.S. jurisdiction from taking any marine mammal on the high seas, and advised that if sport hunts are being conducted beyond Canada's 12-mile limit, which the MMC is interpreting as the high seas, the Service will need to determine whether such taking is consistent with the MMPA.

*Response:* The MMPA does not define the term ''high seas.'' Canada signed the UN Convention of the Law of the Sea in 1982 and considers waters under Canadian jurisdiction to include waters up to the limit of the 200 nautical mile exclusive economic zone (GNWT). This interpretation is comparable to the definition of ''waters under the jurisdiction of the United States'' as defined in the MMPA.

The MMPA provides for exception to the taking prohibitions of section 102 by permit issued under section 104. Section 104(c)(5)(A) allows the Director to issue permits for the import of polar bear trophies legally taken in Canada. The Service has, therefore, determined that the taking of polar bear trophies by U.S. hunters is consistent with the MMPA so long as the trophy is hunted legally in Canada, which includes the waters under the jurisdiction of Canada as long as the provisions of the International Agreement are met.

### *C. Comments on Scientifically Sound Quotas and Maintenance of Sustainable Population Levels*

*Issue 1:* Several respondents questioned the quality of the data used by the Service to make its findings, suggesting the information was insufficient or uncertain for key elements of the management program such as definition of population boundaries.

*Response:* The Service based its findings on the best available information. The Service does not consider the re-examination of population boundaries, for example, by the DRR as being indicative of a scarcity

of data. On the contrary such re-examinations demonstrate an interest in obtaining the best information possible given current management practices and technology.

*Issue 2:* Several respondents thought the GNWT relied too much on population inventories. The length of time between inventories was long and the lack of adequate funds might limit the periodic inventories being conducted.

*Response:* The Service notes that the 20-year timeframe between inventories is practical considering other data Canada collects and uses to monitor polar bear populations and polar bear life history that is characterized by a long life span, slow population growth, large distribution, and low density.

*Issue 3:* Several respondents expressed concern by the lack of standard error measures for population estimates.

*Response:* The Service considers the use of the population estimates within the present context to be valid. The population estimates were determined through research using scientific methodology and are a conservative approach. Although the Service acknowledges that the use of a quantitative term, such as the standard error, to report the reliability of the population estimate is more acceptable scientifically, the use of qualitative terms is appropriate at this time due to sampling bias.

*Issue 4:* The Service received a number of comments on the use of local knowledge collected from hunters in the NWT polar bear management program.

*Response:* The use of local knowledge by the GNWT demonstrates one aspect of co-management of the polar bear resource and reflects the efforts of the GNWT to collect as much information as possible to identify research and management needs. Local knowledge is one kind of information considered in conjunction with monitoring of the polar bear populations. This is similar to other wildlife management programs that use hunter information, such as the white-tail deer programs in the United States. The Service notes that the analyses used to examine the harvest data as well as their interpretation and the conclusions of the investigators have been discussed in a recent publication by Lee and Taylor (1994).

*Issue 5:* Several respondents commented that allowing the import of polar bear trophies into the United States might result in pressure on the GNWT to increase the harvest quotas.

*Response:* The drafters of the 1994 Amendments to the MMPA recognized this possibility and placed provisions in the MMPA to address it, i.e., specific scientific review and findings to ensure the issuance of permits is not having a significant adverse impact on the polar bear populations in Canada. In addition, the NWT polar bear program is subject to review by the IUCN PBSG as well as other national and international representatives at annual PBTC and PBAC meetings.

*Issue 6:* Several respondents were critical of the model used by Canadian wildlife managers for a variety of reasons. One of the biggest concerns was there would be a delay of many years before managers would know if the predictions of the model were correct.

*Response:* Given the varied aspects of the NWT polar bear management program and the constraints of the polar bear life history, the Service believes the model used to calculate sustainable harvest is appropriate. Some time may be required before certain variables within the existing model can be precisely quantified, but this is typical of models for species, such as the polar bear, characterized by low reproductive potential, long life spans, low density, and large distribution. Given this life history, there is no model available which could provide a prediction of trends within a short timeframe. This includes the model currently mandated by the MMPA for U.S. marine mammal stocks which includes the determination of maximum net productivity.

*Issue 7:* The MMC commented that the use of this model would result in very conservative management for populations near carrying capacity, but that populations below their maximum net productivity level will remain depleted. The choice of this model indicates the GNWT intends to maximize yield and to sustain existing populations rather than bring those populations to optimum sustainable levels.

*Response:* The 1994 Amendments do not require the Service to apply the terms ''depleted,'' ''maximum net productivity,'' and ''optimum sustainable levels'' in relation to the NWT polar bear program. The Service must make a finding that Canada has a sport-hunting program based on scientifically sound quotas ensuring the maintenance of the affected population at a sustainable level, not at an optimum sustainable level.

*Issue 8:* Some respondents believed that the GNWT should not manage polar bears under the assumption of maximal recruitment and survival rates (e.g., no density effects).

*Response:* The Service does not agree with these comments. As discussed previously, information is lacking on density-dependent population regulation in bears, including polar bears. Until such time as there is accurate data on how density affects bears, the Service believes the GNWT has taken a reasonable approach by assuming that there is no density effect and basing its management program on measurable numbers.

*Issue 9:* The MMC asked why the Service used the midpoint or best population estimates, rather than minimum population estimates, which are used in calculating potential biological removal levels under the MMPA.

*Response:* The Service used the phrase ''best estimates for vital rates'' in the proposed rule, not ''best population estimates.'' The Service believes the population estimates used are appropriate. It was agreed at the workshop for the development of the DRR polar bear model (DeMaster 1988) that minimum estimates of population size should be used when reliable estimates of population size are not available. This results in a conservative quota.

*Issue 10:* Several respondents considered the emphasis on harvest at a 2:1 sex ratio as inappropriate given the lack of information on number of males needed to make up a healthy population and male reproductive success, and the possible reduction of genetic vigor in the population.

*Response:* The Service acknowledges that genetic viability, mate selection, and genetic vigor are not well documented for polar bear but believes that Canada is using the best available information in deciding on tools to manage this species. It is known that male polar bears are opportunistic breeders and do not contribute to the care of young. The loss of a male bear generally will have less of an impact on population recruitment than the loss of a female. So the sex-selective harvest is a valid wildlife management tool that is based on science and is utilized to conserve the population by reducing the impact of the harvest on females.

*Issue 11:* Other respondents thought the GNWT could not keep the harvest of females within the specified ratio because the DRR does not appear to have effective law enforcement against the taking of female bears.

*Response:* The DRR has regulations and enforces such regulations for the harvest of females in excess of the quota. Because there have been problems with implementation of the harvest sex ratio, the GNWT developed the Flexible Quota Option that provides a more consistent means of reducing the

community quota when there has been an overharvest of either male or female polar bears.

*Issue 12:* The MMC pointed out that if the proportion of females in the harvest drops to 1.5 percent, the allowable harvest would be the entire population.

*Response:* The Service agrees that the theoretically absurd outcome hypothesized by the MMC could occur if the GNWT blindly followed its formula without regard to the dramatic change in the composition of the harvest. It is highly unlikely that such would occur. To further ensure that such an event does not occur, the GNWT encourages polar bear harvesting at a 2:1 ratio. The use of the Flexible Quota Option will help to ensure this level of harvest is not exceeded.

*Issue 13:* The Service received a number of comments on the method used by the Service to approve populations. Some respondents thought it was inappropriate to use the population status or exceeding the quota as determinative factors, but rather the Service should look at the success of the overall management program.

*Response:* The Service agrees that neither factor alone fully reflects how a particular population meets the required finding. The Service proposed to use the population status as a non-discriminatory means of approving populations, but now believes the population status is better used as an indicator of how well the allocated quota is being adhered to.

The Service must make a finding that there is a sport-hunting program based on scientifically sound quotas to ensure the sustainability of the affected population. To clarify, the Service views scientifically sound quotas as ones that are based on scientific methodology that have undergone some scientific (i.e., peer) review and/or are generally accepted by the scientific community at large. It is the sport-hunting program, not the quota, that must include mechanisms that will ensure the maintenance of the affected population at a sustainable level. The quota is one factor that affects the growth or decline of the population. See the previous section on the legal and scientific findings for further discussion.

*Issue 14:* One respondent thought the Service should approve populations where authorities are working to establish a management agreement rather than requiring such an agreement be in place.

*Response:* The Service believes that the management agreements are an essential part of co-management of polar bear populations between the resource users and government wildlife managers. So the Service continues to require management agreements be in place before approving a population.

*Issue 15:* One respondent noted that the Service had approved the Southern Beaufort Sea and Western Hudson Bay populations with a condition that the management agreements between communities remain in place. The respondent questioned why the Service had not placed a similar condition on other approved populations.

*Response:* The Service reviewed the management agreements for all populations in making its proposed findings, but only conditioned the approval for these two particular areas that involve interjurisdictional management agreements. Given the critical role that management agreements play in the NWT polar bear management program, the Service agrees that the approval of all populations should be conditioned and revised the regulations to reflect this.

*Issue 16:* In the proposed rule, the Service stated that the Quebec Inuit had declined to participate in co-management agreements with the GNWT. The CWS clarified that although there is no specific agreement between Quebec and the NWT, both Quebec and the Quebec Inuit have been active participants in the cooperative management of shared populations, and that all parties are committed to cooperating to ensure the conservation of polar bears.

*Response:* The Service regrets the error regarding participation of the Quebec Inuit and removed the statement from the preamble of this rule.

*Issue 17:* The Hunting, Fishing and Trapping Coordinating Committee established under the James Bay and Northern Quebec Agreement and the Act Respecting Hunting and Fishing Rights in the James Bay and New Quebec Territories asked the Service to allow the import of polar bear hides resulting from subsistence harvest in Quebec.

*Response:* The 1994 Amendment to the MMPA only allows the issuance of a permit to import a polar bear trophy that was sport hunted by the permittee. Any other exemption to the prohibitions of the MMPA, including the import of purchased hides or handicrafts for personal use, would require administrative action under other provisions of the MMPA.

*Issue 18 Southern Beaufort Sea:* One respondent thought the Service should not approve the Southern Beaufort Sea area based on the lack of: management provisions, including a treaty or agreement between the United States and Canada to manage this population; limits on Native take of marine mammals; and enforceable measures on the take of pregnant polar bears and cubs.

*Response:* The Service accepts the agreement between the resource user groups in Canada and Alaska as being in the same context as management agreements for populations contained within the NWT. The agreement establishes the sustainable harvest level and allocation of the quota, provides for protection of cubs and their mothers and denning females, and restricts hunting seasons. The NWT management program incorporates measures to resolve problems and to investigate or correct a suspected decline in this shared population.

*Issue 19 Northern Beaufort Sea:* One respondent disagreed with the Service's approval of the Northern Beaufort Sea population due to the failure of hunters to adhere to a 2:1 harvest ratio of males to females.

*Response:* The Service provides the following clarification. Although the harvest in the Northern Beaufort Sea has not been at 2:1, the harvest of females did not exceed the 2:1 quota. For example, the sustainable harvest in the 1993/1994 season was 36. If the harvest was conducted at a 2:1 ratio, then 12 females could have been harvested. The total kill was 16, with 50 percent of these being female. So eight female polar bears were killed in the 1993/1994 season, and the quota of 12 females was not exceeded.

*Issue 20 Viscount Melville:* Several respondents disagreed with the Service's approval of the Viscount Melville population since there is a moratorium on hunting. One felt that it was not clear whether the DRR had enforcement authority over this moratorium.

*Response:* The Service considers this area closed to U.S. sport hunters, but approved the population since the GNWT based the quotas on recent scientific information and a management program is in place. Although the residents in the geographic area inhabited by this population voluntarily agreed to reduce hunting pressure, the GNWT has enforcement authority under the management agreement.

*Issue 21 Gulf of Boothia:* Some respondents thought the Service should not approve the Gulf of Boothia population and noted that the Service had acknowledged that the data for this population is limited and rated as poor and that the population status is listed as decreasing over the 5-year average.

*Response:* The Service agrees. After evaluating the overall sport-hunting program in this area, the Service revised the regulations to defer approval of this population. The GNWT considers the population estimate information, which plays a substantial part in the calculation of the quota, as poor with no measurable level of precision. The Service found that the quota for this population does not fully meet the criteria of being scientifically sound. In addition the Service is concerned that the harvest of females has exceeded the quota.

*Issue 22 M'Clintock Channel:* One respondent similarly disagreed with the Service's approval of the M'Clintock Channel population, arguing that Canada has not conducted reliable surveys in this area for over 20 years.

*Response:* Contrary to the Gulf of Boothia population where there was an increase in the population estimate based in part on anecdotal evidence, the GNWT decreased the population estimate for the M'Clintock Channel population based on anecdotal evidence and concerns regarding the previous estimate obtained many years before. The Service continues to approve this population given this more conservative approach. The DRR recognized the problem of the poor population estimate and Canada has scheduled research to occur within the next 5 years. A management agreement is in place between the communities that share the quota and hunting was at a 2:1 male to female ratio in the 1993–1994 season.

*Issue 23 Western Hudson Bay:* Some respondents thought the Service should disapprove the Western Hudson Bay population because bears from this population intermix with bears from the Foxe Basin and Southern Hudson Bay populations that the Service had not proposed for approval.

*Response:* Canada based the boundaries of the Western Hudson Bay population on movements of marked bears. In the open water months the water acts as a natural geographical barrier between the populations. In ice-covered months when this natural barrier is no longer present some limited movements of bears between populations have been found. Given the high number of marked bears in the Western Hudson Bay population and the recent and intensive study of the Foxe Basin population, biologists would most likely have discovered substantial mixing of bears between the populations if it were occurring.

*Issue 24 Parry Channel and Baffin Bay:* Numerous respondents thought the Service should approve the Parry Channel/Baffin Bay population(s), noting most sport hunting occurs in these areas. Many said that the GNWT has significant new data on the Parry Channel/Baffin Bay population(s), including information on population boundaries and sustainable harvest level. They urged the Service to evaluate fully the data from Canada before making any final decision on disapproval of the populations.

*Response:* The Service is aware that study of the Parry Channel and Baffin Bay area is in progress. When available, the Service will consider in a subsequent review any new data for these populations, as described previously for all populations that the Service has deferred findings.

The Service notes that data on the 1993/1994 hunting season as well as the 3-year and 5-year averages (Table 3) indicate the total harvest in these areas has consistently been more than 70 percent greater than the calculated sustainable harvest. Compliance with quotas is one factor the Service considers in its review.

*Issue 25 Davis Strait*: One respondent advised that every indication suggested a substantially growing population of polar bears in Davis Strait and the Service should approve this population.

*Response:* The Service agrees there is observational information to suggest this population has increased since the 1979 field work. The Service, however, was unable to find based on the scientific and management data currently available that the quota is scientifically sound, and that communities in the NWT and Greenland, Labrador, or Quebec have management agreements in place. The Service has deferred making a decision on approving the Davis Strait population at this time.

*D. Comments on CITES*

A couple of respondents noted that provincial wildlife offices issue CITES permits, not the CWS as indicated in the proposed rule.

*Response:* To clarify, the Service notes the CWS is the CITES Management Authority for Canada, but provincial and territorial offices issue CITES permits for the export of polar bear trophies.

*E. Comments on Illegal Trade in Bear Parts*

*Issue 1:* Several respondents commented that the provisions of the proposal would not prevent bear gall bladders from entering into illegal trade.

*Response:* The Service agrees and revised the regulations so the applicant certifies that the gall bladder and its contents have been destroyed at the time of application, rather than at the time of import. This allows the Service to review documentation prior to the issuance of the import permits. Since Canadian law does not require physical surrender of the gall bladder to the community DRR officials, the Service was unable to adopt that suggestion.

*Issue 2:* The Service received opposing comments on the requirement that the permittee must import the polar bear trophy only at a designated port for wildlife.

*Response:* In considering the comments, the Service agrees that the import of a full mount trophy could cause a financial burden to the owner. The Service revised the regulations to allow applicants with this type of trophy to request an exception to designated port authorization at the time the applicant submits an MMPA import permit application to the Service. Such request will need to meet the requirements of 50 CFR Part 14. The permittee will need to make special arrangements for a Service Office to tag the trophy at the time of entry. All other trophies must be imported through a designated port for wildlife.

*Issue 3:* One respondent thought hunters should be allowed to ship trophies through the international mail.

*Response:* To prevent misdirection of trophies and difficulties in clearing parcels, the Service revised the regulations specifically not to allow the shipment of polar bear trophies through the international mail. The Service encourages the permittee to work directly with Service personnel at a designated port when making arrangements to import a trophy. The Service recommends that the permittee use airline cargo or common carriers to facilitate the inspection, clearance, and tagging of a trophy.

*Issue 4:* One respondent requested the Service not allow sport hunters to present CITES permits retrospectively for clearance.

*Response:* The Service will not accept retrospective CITES permits for the import of polar bear trophies since a condition of the MMPA import permit is that the trophies must be accompanied by a valid CITES document.

*Issue 5:* Some respondents stated that import requirements would not prevent illegal activities while others thought the requirements were burdensome, especially notification of the Service prior to import.

*Response:* The Service believes that the general inspection and clearance procedures of 50 CFR Part 14 (i.e., prior notice of arrival, filing of a wildlife declaration form, etc.) and the specific requirements for polar bear trophy

imports (i.e., use of a designated port for wildlife, tagging of the hide, etc.) will be effective in ensuring only legally taken polar bears enter the United States. The Service works with Canadian enforcement and U.S. Customs to ensure effective inspection of shipments and notes that Service wildlife inspectors must inspect and cancel Canadian export permits at the time of import as required by CITES.

Prior notification of the import of a polar bear trophy is necessary to coordinate inspection and tagging by Service wildlife inspectors. The Service did, however, reduce the proposed notification to 48 hours in this rule to agree with the current timeframe in 50 CFR Part 14.

To assist the importer, the Service will provide information to the permittee when the permit is issued that outlines import procedures. In addition, the Service will condition each import permit with specific polar bear import requirements.

*Issue 6:* Two respondents urged the Service to eliminate some of the paperwork required at the time of import, especially duplicate certifications.

*Response:* The Service agrees and revised the regulations to require certifications at the time of application for a permit. The Service also changed the regulations to require the applicant to present documents to show legal take, such as a copy of the NWT hunting license and tag number, at the time of application for a permit, rather than at the time of import.

*Issue 7:* One individual requested that the Service refrain from issuing permits until a tagging program is in place and fully functional.

*Response:* The Service remains interested in pursuing a joint tagging program with Canada. However, given the time necessary to develop and implement such a program, the Service has developed an independent program for tagging and marking polar bear trophies upon import as described in § 18.30(e).

*Issue 8:* One respondent questioned whether trophy parts other than the hide or rug need to be tagged.

*Response:* Only the hide (i.e., raw or finished as a rug or mount) must be tagged. But the Service revised the regulations at § 18.30(e)(7) to clarify that parts of the trophy other than the hide, such as the skull or bones, must be permanently marked with the hide tag number upon import to show they are part of the same trophy.

*Issue 9:* One individual asked the Service to eliminate the proposed requirement to tag a full mount with a leg bracelet.

*Response:* The Service agrees. Full mounts will now have the same tagging requirement as rugs or hides. The Service must affix a permanent plastic tag in a plainly visible yet unobtrusive location.

*Issue 10:* The Service received a range of comments on the replacement of lost or broken tags: the Service should require proof that the trophy had been tagged and legally imported, not just a written statement when a tag is lost; the hunter may not know when the tag was lost; the Service should consider the time and expense necessary to move and retag a full mounted bear; and the permittee should be required to pay a tag replacement fee.

*Response:* The Service revised the regulations to clarify information needed to show the trophy had been tagged and legally imported. The permittee needs to keep copies of the cleared import permit and canceled Canadian CITES export permit to document legal import. The Service anticipates few permittees will need to have tags replaced and intends permittees to work with Service regional staff to make reasonable arrangements for replacement tags. The Service regards the tagging of sport-hunted polar bear trophies as essential for the proper administration of the program and is not planning to charge a fee to replace lost or broken tags.

### *F. Comments on Importation of Pregnant or Nursing Animals Under the MMPA*

The Service received numerous comments on the three proposed options for ensuring that bears to be imported were neither pregnant nor nursing when sport hunted. Respondents thought it would be difficult to ascertain whether a polar bear is pregnant prior to moving into a den; to determine whether a bear is pregnant if in the early stages of pregnancy; for a hunter, guide, Wildlife Inspector, or a DRR Officer to make the required certification; and to determine whether a young bear was nursing or a female was lactating.

The MMC proposed a fourth option not to issue import permits for polar bears taken from populations with hunting seasons that begin before December 1st. Another respondent suggested limiting permits to the import of adult male bears.

*Response:* Current NWT regulations protect female polar bears from being hunted in denning areas, when in dens or moving into dens, or in family groups. The Service learned that the GNWT affords such protection, in part, by opening polar bear hunting seasons in December when females would already be in dens, or prohibiting the hunting of female polar bears until December in areas where the polar bear hunting season begins in October. The Service added provisions to the regulations to ensure that bears pregnant near term or nursing (either mother or young) are not imported. See the previous section on the finding on pregnant and nursing polar bears for further discussion.

### *G. Comments on Bears Taken Before the 1994 Amendments*

*Issue 1:* The MMC questioned why the Service proposed to establish the cutoff for this provision as the effective date of the final rule, rather than the date the 1994 Amendments were enacted.

*Response:* The Service proposed to establish this date in view of the elapsed time between enactment of the amendments and final regulations in order to more fully inform the public of the proposed regulations. However, in considering the MMC's comment in view of the plain language of the Amendments, the Service decided to set the grandfather date as the date provided by the law, April 30, 1994.

*Issue 2:* Several respondents thought the Service was required to make the findings on the sport-hunting program that was in place at the time the bear was taken. The MMC suggested that if quotas have been adjusted downward in response to overharvesting, such adjustments underscore the need to review the quotas that were in place at the time of taking.

*Response:* The Service does not agree that the Service must base the findings on the program in place at the time the bear was sport hunted. The MMPA specifically uses the present tense in the findings—''Canada has a monitored and enforced sport-hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears.'' There is no other reference in the MMPA amendment that requires or infers that the Service must base the findings for trophies taken in the past on the program at the time of taking. Furthermore, since Congress enacted the MMPA prior to development and implementation of the International Agreement, it is possible that some bears were sport hunted but not imported in the time span between enactment of the MMPA and the International Agreement.

*Issue 3:* Several respondents did not agree with the Service's interpretation that bears taken, but not imported, prior to final regulations were exempt from

the required findings of section 104(c)(5)(A) of the MMPA.

*Response:* After careful consideration of the comments submitted concerning the grandfathering of polar bears, the Service agrees that the required findings of section 104(c)(5)(A) of the MMPA are applicable to all polar bear sport-hunted trophies taken in the NWT since implementation of the MMPA in 1972. Therefore, the grandfather provision of this final rule will apply only to those populations which have been approved. Polar bear trophies sport-hunted from currently deferred populations could be imported once the Service was able to make all of the findings and the population was approved.

*Issue 4:* One individual commented that grandfathering of previously taken bears rewarded people who took bears counter to the purposes of the MMPA before the law allowed their import.

*Response:* Congress crafted the special import provision in § 104(c)(5) to avoid the more thorough waiver proceeding required by §§ 101(a)(3) and 103. By this rule, we implement the special import procedure to effectuate the intent of Congress. The Service lacks discretion to modify this procedure by adding additional requirements.

*Issue 5:* The MMC recommended that the Service assume that a pre-Amendment bear may have been pregnant or nursing unless the applicant provides sufficient evidence that the bear was a male or the bear was taken at a time of year when all polar bears normally would be in dens.

*Response:* The Service reviewed the information currently available and revised the application requirements and issuance criteria in the final regulations to avoid the possibility that pregnant or nursing bears might be imported. See the discussion in the previous section on the import of pregnant and nursing bears.

## Required Determinations

The Service prepared an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA), for this final rule and concluded in a Finding of No Significant Impact (FONSI) based on a review and evaluation of the information contained within the EA that there would be no significant impact on the human environment as a result of this regulatory action and that the preparation of an environmental impact statement on this action is not required by Section 102(2) of NEPA or its implementing regulations. The issuance of individual marine mammal permits is categorically excluded under 516 DM 6, Appendix 1. The EA and FONSI for this rule are on file at the Service's Office of Management Authority in Arlington, Virginia, and a copy may be obtained by contacting the individual identified under the section entitled, **FOR FURTHER INFORMATION.**

This final rule was not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866. A review under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) revealed that this rulemaking would not have a significant economic effect on a substantial number of small entities which includes certain businesses, organizations, or governmental jurisdictions, because no burden will be added to the already generally mandated permit requirements imposed under the Marine Mammal Protection Act, 16 U.S.C. 1374. No change in the demography of populations is expected. The final rule will affect only those in the United States who have hunted, or intend to hunt, polar bear in Canada. This action is not expected to have significant taking implications, per Executive Order 12630.

The Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) has approved the collection of information contained in this final rule and assigned clearance number 1018–0022 which expires on January 31, 1997. The Service submitted the necessary documentation to OMB requesting three year approval for the collection of information for all areas covered by this rule. The collection of information will not be required until it has been approved by OMB. The Service will collect information through the use of the Service's form 3–200, which will be modified pursuant to 50 CFR 18.30, to address the specific requirements of this final rule. The Service is collecting the information to evaluate permit applications. The likely respondents to this collection will be sport hunters who wish to import sport-hunted trophies of polar bears legally taken while hunting in Canada. The Service will use the information to review permit applications and make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance or denial of permits. The applicant must respond to obtain or retain a permit. A single response is required to obtain a benefit. The Service estimates the public reporting burden for this collection of information to vary from 15 minutes to 4 hours per response, with an average of 1.028 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimated number of likely respondents is less than seventy (70), yielding a total annual reporting burden of seventy-two (72) hours or less. The Service determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year upon local or state governments or private entities. The Service determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

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Authorship

The originators of this final rule are Lynn Noonan, Paul McGowan, and Maggie Tieger of the Office of Management Authority, Branch of Permits, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, Part 18 of Chapter I of Title 50 of the Code of Federal Regulations is hereby amended as follows:

## PART 18—MARINE MAMMALS

1. The authority citation for part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Section 18.4 is added to subpart A of part 18 to read as follows:

### § 18.4 Information collection requirements.

(a) The Office of Management and Budget under 44 U.S.C. 3501 *et seq.* has approved the information collection requirements contained in Subpart D and assigned clearance number 1018–0022. The Service is collecting this information to review and evaluate permit applications and make decisions according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance or denial of permits. The applicant must respond to obtain or retain a permit.

(b) The Service estimated the public reporting burden for this collection of information to vary from 15 minutes to 4 hours per response, with an average of 1.028 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Office, Fish and Wildlife, Service Office of Management and Budget, Mail Stop 224, Arlington Square, U.S. Department of the Interior, 1849 C Street, N.W., Washington, DC 20240 and the Office of Management and Budget, Paperwork Reduction Project (1018–0022), Washington, DC 20503.

3. Section 18.30 is added to subpart D of part 18 to read as follows:

### § 18.30 Polar bear sport-hunted trophy import permits.

(a) *Application procedure.* You, as the hunter or heir of the hunter's estate, must submit an application for a permit to import a trophy of a polar bear taken in Canada to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Arlington, Virginia 22203. You must use an official application (Form 3–200) provided by the Service and must include as an attachment all of the following additional information:

(1) Certification that:

(i) You or the deceased hunter took the polar bear as a personal sport-hunted trophy;

(ii) You will use the trophy only for personal display purposes;

(iii) The polar bear was not a pregnant female, a female with dependent nursing cub(s) or a nursing cub (such as in a family group), or a bear in a den or constructing a den when you took it; and

(iv) For a polar bear taken after April 30, 1994, you made sure the gall bladder and its contents were destroyed;

(2) Name and address of the person in the United States receiving the polar bear trophy if other than yourself;

(3) For a polar bear received as an inheritance, documentation to show that you are the legal heir of the decedent who took the trophy;

(4) Proof that you or the decedent legally harvested the polar bear in Canada as shown by one of the following:

(i) A copy of the Northwest Territories (NWT) hunting license and tag number;

(ii) A copy of the Canadian CITES export permit that identifies the polar bear by hunting license and tag number;

(iii) A copy of the NWT export permit; or

(iv) A certification from the Department of Renewable Resources, Northwest Territories, that you or the decedent legally harvested the polar bear, giving the tag number, location (settlement and population), and season you or the decedent took the bear;

(5) An itemized description of the polar bear parts you wish to import, including size and the sex of the polar bear;

(6) The month and year the polar bear was sport hunted;

(7) The location (nearest settlement or community) where the bear was sporthunted;

(8) For a female bear or a bear of unknown sex that was taken before January 1, 1986, documentary evidence that the bear was not pregnant at the time of take, including, but not limited to, documentation, such as a hunting license or travel itinerary, that shows the bear was not taken in October, November, or December or that shows that the location of the hunt did not include an area that supported maternity dens; and

(9) For a female bear, bear of unknown sex, or male bear that is less than 6 feet in length (from tip of nose to the base of the tail) that was taken prior to the 1996/97 NWT polar bear harvest season, available documentation to show that the bear was not nursing, including, but not limited to, documentation, such as a certification from the NWT, that the bear was not taken while part of a family group.

(b) *Definitions.* In addition to the definitions in this paragraph, the definitions in 50 CFR 10.12, 18.3, and 23.3 apply to this section.

(1) *Sport-hunted trophy* means a mount, rug or other display item composed of the hide, hair, skull, teeth, baculum, bones, and claws of the specimen which was taken by the applicant or decedent during a sport hunt for personal, noncommercial use and does not include any internal organ of the animal, including the gall bladder. Articles made from the specimen, such as finished or unfinished, worked, manufactured, or handicraft items for use as clothing, curio, ornamentation, jewelry, or as a utilitarian item are not considered trophy items.

(2) *Management agreement* means a written agreement between parties that share management responsibilities for a polar bear population which describes what portion of the harvestable quota will be allocated to each party and other measures which may be taken for the conservation of the population, such as harvest seasons, sex ratio of the harvest, and protection of females and cubs.

(c) *Procedures for issuance of permits and modification, suspension or revocation of permits.* We, the Service, shall suspend, modify or revoke permits issued under this section:

(1) In accordance with regulations contained in § 18.33; and

(2) If, in consultation with the appropriate authority in Canada, we determine that the sustainability of Canada's polar bear populations is being adversely affected or that sport hunting may be having a detrimental effect on maintaining polar bear populations throughout their range.

(d) *Issuance criteria.* In deciding whether to issue an import permit for a sport-hunted trophy, we must determine in addition to the general criteria in part 13 of this subchapter whether:

(1) You previously imported the specimen into the United States without a permit;

(2) The specimen meets the definition of a sport-hunted trophy in paragraph (b) of this section;

(3) You legally harvested the polar bear in Canada;

(4) Canada has a monitored and enforced sport-hunting program consistent with the purposes of the 1973 International Agreement on the Conservation of Polar Bears;

(5) Canada has a sport-hunting program, based on scientifically sound quotas, ensuring the maintenance of the affected population at a sustainable level; and

(6) The export and subsequent import:

(i) Are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and other international agreements and conventions; and

(ii) Are not likely to contribute to illegal trade in bear parts, including for bears taken after April 30, 1994, that the gall bladder and its contents were destroyed.

(e) *Additional permit conditions.* Your permit to import a sport-hunted trophy of a polar bear taken in Canada is subject to the permit conditions outlined in § 18.31(d) and the following additional permit conditions:

(1) You, the permittee, may not import internal organs of the polar bear, including the gall bladder;

(2) After import you may not alter or use the trophy in a manner inconsistent with the definition of a sport-hunted polar bear trophy as given in § 18.30(b);

(3) You may not import a sport-hunted trophy if the polar bear at the time you or the decedent took it was:

(i) A nursing bear or a female with nursing young (i.e., part of a family group);

(ii) A pregnant female; or

(iii) A bear moving into a den or in a den;

(4) You must present to Service personnel at the time of import a valid CITES document from the country of export or re-export;

(5) You must comply with the following import procedures:

(i) Import the sport-hunted trophy through a designated port for wildlife imports (see § 14.12 of this subchapter) during regular business hours, except for full mount trophies that have been granted an exception to designated port permit requirements under § 14.32 of this subchapter;

(ii) Not send the trophy through the international mail; and

(iii) Notify Service personnel at the port at least 48 hours before the import (see § 14.54 of this subchapter) and make arrangements for Service personnel to affix a tag in accordance with paragraph (e)(7) of this section prior to being cleared (see § 14.52 of this subchapter);

(6) You must import all parts of a single trophy at the same time;

(7) The following tagging/marking procedures apply:

(i) Service personnel must affix a permanently locking tag that contains a unique serial number and the common name ''polar bear'' to the hide which must remain fixed indefinitely to the hide as proof of legal import; and

(ii) Service personnel must permanently mark upon import the parts of the trophy other than the hide, such as the skull and bones, with the hide tag number; and

(8) If the tag comes off the hide, you must within 30 days:

(i) Contact the nearest Service office at a designated port or a Law Enforcement office as given in § 10.22 of this subchapter to schedule a time to present the trophy for retagging;

(ii) Provide as proof that the trophy had been tagged and legally imported a copy of the:

(A) Canceled CITES export permit or re-export certificate;

(B) Cancelled U.S. import permit issued under this section; or

(C) Cleared wildlife declaration form (3–177); and

(iii) Present either the broken tag, or if the tag was lost, a signed written explanation of how and when the tag was lost.

(f) *Duration of permits.* The permit will be valid for no more than one year from the date of issuance.

(g) *Fees.*

(1) You must pay the standard permit processing fee as given in § 13.11(4) when filing an application.

(2) You must pay the issuance fee of $1,000 when we notify you the application is approved. We cannot issue an import permit until you pay this fee. We will use the issuance fee to develop and implement cooperative research and management programs for the conservation of polar bears in Alaska and Russia under section 113(d) of the Marine Mammal Protection Act.

(h) *Scientific review.* (1) We will undertake a scientific review of the impact of permits issued under this section on the polar bear populations in Canada within 2 years of March 20, 1997.

(i) The review will provide an opportunity for public comment and include a response to the public comment in the final report; and

(ii) We will not issue permits under this section if we determine, based upon scientific review, that the issuance of permits under this section is having a significant adverse impact on the polar bear populations in Canada; and

(2) After the initial review, we may review whether the issuance of permits under this section is having a significant adverse impact on the polar bear populations in Canada annually in light of the best scientific information available. The review must be completed no later than January 31 in any year a review is undertaken.

(i) *Findings.* Polar bear sport-hunted trophies may only be imported after issuance of an import permit, and in accordance with the following findings and conditions:

(1) We have determined that the Northwest Territories, Canada, has a monitored and enforced sport-hunting program that meets issuance criteria of paragraphs (d)(4) and (5) of this section for the following populations: Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville Sound (subject to the lifting of the moratorium in this population), Western Hudson Bay, and M'Clintock Channel, and that:

(i) For the Southern Beaufort Sea population, no bears are taken west of the equidistant line of the Beaufort Sea;

(ii) For all populations, females with cubs, cubs, or polar bears moving into denning areas or already in dens are protected from taking by hunting activities; and

(iii) For all populations, management agreements among all management entities with scientifically sound quotas are in place; and

(2) Any sport-hunted trophy taken in the Northwest Territories, Canada, between December 21, 1972, and April 30, 1994, may be issued an import permit when:

(i) From an approved population listed in paragraph (i)(1); and

(ii) The issuance criteria of paragraph (d)(1), (2), (3), and (6) of this section are met.

Dated: February 7, 1997.

George T. Frampton, Jr.,

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 97–3954 Filed 2–14–97; 8:45 am]

**BILLING CODE 4310–55–P**

Federal Register

Tuesday
February 18, 1997

## Part III

# Department of Education

**34 CFR Part 668**

**Student Assistance General Provisions; Proposed Rule**

## DEPARTMENT OF EDUCATION

### 34 CFR Part 668

### Student Assistance General Provisions

**AGENCY:** Department of Education.

**ACTION:** Extension of comment period and notification of the availability of additional information.

**SUMMARY:** On September 20, 1996, the Department of Education published in the Federal Register a Notice of Proposed Rulemaking (NPRM) for the Student Assistance General Provisions (34 CFR Part 668). In the NPRM, the Secretary proposed new standards of financial responsibility (60 FR 49552–49574) that would apply to all institutions participating in a program authorized by title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs).

On December 18, 1996, the Secretary published a Notice in the Federal Register (61 FR 66854) reopening the comment period on particular parts of the NPRM until February 18, 1997. The Secretary reopened the comment period in response to public comment received on the NPRM that the higher education community needed more time to analyze the proposed financial standards and provide the Secretary with additional comment based on that analysis.

The Secretary is further extending the reopened comment period. The Secretary is doing so to allow the higher education community to comment on information regarding the proposed ratio methodology, some of which will not be available to the public before the expiration of the reopened comment period on February 18.

**DATES:** Comments must be received on or before March 24, 1997.

**ADDRESSES:** All comments concerning this notice or the notice of proposed rulemaking should be addressed to Mr. David Lorenzo, U.S. Department of Education, P.O. Box 23272, Washington, D.C. 20026, or to the following internet address: fin__resp@ed.gov

**FOR FURTHER INFORMATION CONTACT:** Mr. David Lorenzo or Mr. John Kolotos, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3045 ROB–3, Washington, D.C. 20202, telephone (202) 708–7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern standard time, Monday through Friday.

Background

On September 20, 1996, the Secretary published an NPRM proposing new standards of financial responsibility based on a ratio methodology developed in consultation with the accounting firm of KPMG Peat Marwick LLP (KPMG), alternative standards of financial responsibility and other requirements under a proposed Subpart L of the Student Assistance General Provisions regulations, and compliance and financial statement audit requirements under Subpart B of these regulations. On November 29, 1996, the Secretary published a Notice of Final Regulations amending Subpart B of the Student Assistance General Provisions regulations and making a conforming amendment to § 600.5 of the Institutional Eligibility regulations.

However, the Secretary did not codify in the November 29, 1996 final regulations the general standards of financial responsibility, alternative standards, and change of ownership requirements proposed under Subpart L. Instead, the Secretary decided to obtain additional comment and information from the higher education community, and delayed promulgating final regulations for these provisions pending an extended review of that comment and information. Accordingly, on December 18, 1996, the Secretary published a Notice reopening the comment period until February 18, 1997. In that Notice, the Secretary identified the proposed provisions for which additional comment could be submitted and solicited comment on specific issues relating to those provisions.

In the meantime, the Secretary has retained KPMG to assist the Department in gathering additional data and in reexamining the proposed ratio methodology in light of those data and the issues raised by commenters. As the Department and KPMG reexamine the proposed ratio methodology and generate information that can be shared with the community, the Secretary will make that information available through meetings and by other means. To provide an opportunity for the public to comment on this additional information, and to ensure that the community's views and analyses of this information are incorporated in the regulatory record, the Secretary extends the current comment period.

While the Secretary will continue to evaluate comments already submitted, the Secretary is particularly interested in receiving comments on new information the Department makes available. Interested parties may obtain this information from the financial responsibility section of the Department's web site at the following URL address: http://www.ed.gov/offices/OPE/PPI. This web site also contains instructions for downloading earlier Federal Register publications and other documents relating to financial responsibility.

Dated: February 13, 1997.

David A. Longanecker,

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 97–4054 Filed 2–14–97; 8:45 am]

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Vol. 62, No. 32

Tuesday, February 18, 1997

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## FEDERAL REGISTER PAGES AND DATES, FEBRUARY

4895–5138 ..... 3
5139–5292 ..... 4
5293–5518 ..... 5
5519–5740 ..... 6
5741–5902 ..... 7
5903–6098 ..... 10
6099–6442 ..... 11
6443–6702 ..... 12
6703–6850 ..... 13
6851–7132 ..... 14
7133–7334 ..... 18

## CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
6970 ..... 5287
6971 ..... 5291
6972 ..... 6443

**Executive Orders:**
12961 (Continued by EO 13034) ..... 5137
13034 ..... 5137
13035 ..... 7131
February 6, 1915 (Revoked by PLO 7239 (62 FR 23)) ..... 5244

**5 CFR**

Ch. LXI ..... 6445
930 ..... 6448

**Proposed Rules:**
293 ..... 5174, 7298
351 ..... 5174, 7298
430 ..... 5174, 7298
531 ..... 5174, 7298
900 ..... 4940

**7 CFR**

Ch. XVII ..... 6449
210 ..... 5519
226 ..... 5519
319 ..... 5293
401 ..... 5903
433 ..... 6099
457 ..... 5903, 6099, 6703, 7133
868 ..... 6705
966 ..... 6851
984 ..... 6110
1755 ..... 7135

**Proposed Rules:**
354 ..... 6739
401 ..... 6134, 6739
457 ..... 6134, 6739
956 ..... 5933
980 ..... 6138
1496 ..... 6497

**8 CFR**

204 ..... 6707

**9 CFR**

78 ..... 5907
91 ..... 5520
94 ..... 5741
381 ..... 5131
391 ..... 6111

**Proposed Rules:**
201 ..... 5935

**10 CFR**

2 ..... 6664, 6672
40 ..... 6664, 6672
70 ..... 6664, 6672
71 ..... 5907
76 ..... 6664, 6672

**Proposed Rules:**
2 ..... 6672
40 ..... 6672
70 ..... 6672
76 ..... 6672
430 ..... 5782
431 ..... 6888
835 ..... 5883
960 ..... 4941

**12 CFR**

4 ..... 6449
208 ..... 6449
304 ..... 4895
335 ..... 6852
337 ..... 6449
563 ..... 6449
701 ..... 5315
931 ..... 6860

**Proposed Rules:**
226 ..... 5183
312 ..... 6139
328 ..... 6142

**13 CFR**

121 ..... 6453, 6454

**Proposed Rules:**
107 ..... 6147
121 ..... 6499

**14 CFR**

39 ..... 4899, 4900, 4902, 4904, 4906, 4908, 5143, 5145, 5742, 5743, 5744, 5746, 5748, 5752, 5753, 6455, 6457, 6459, 6499, 6502, 6504, 6708, 6861, 7152
71 ..... 5147, 5148, 5149, 5150, 5755, 5756, 5757, 6461, 6462, 6463, 6464, 6465, 6506, 6507, 6508, 6698, 6710, 6864, 6865
97 ..... 5151, 5154, 6711, 6712, 6714
217 ..... 6715
241 ..... 6715
383 ..... 6719
1217 ..... 6466

**Proposed Rules:**
21 ..... 5076
23 ..... 5552
25 ..... 5076
39 ..... 4941, 4944, 5186, 5350, 5783, 5785, 5787, 6455, 6457, 6459, 6749, 6888, 6890, 6892, 7180, 7182, 7184
71 ..... 5074, 5188, 5194, 5195, 5937, 5938, 5939, 6461, 6462, 6463, 6464, 6465, 6698, 6747, 6748, 6864, 6865
91 ..... 5076

119.....5076, 7299
121.....5076
125.....5076
135.....5076, 5788
300.....5094
302.....5094

**15 CFR**

738.....6682
740.....6682
770.....6682
772.....6682
744.....4910, 6682

**16 CFR**

305.....5316
423.....5724
1507.....4910

**17 CFR**

15.....6122
18.....6122
19.....6122
210.....6044
228.....6044
229.....6044
239.....6044
240 .....6044, 6468, 6469, 6474
249.....6044
404.....7153

**Proposed Rules:**

230.....7186

**18 CFR**

157.....5913
284.....5521

**Proposed Rules:**

153.....5940

**19 CFR**

101.....6721

**20 CFR**

404.....6114, 6408
416.....6408

**21 CFR**

178.....6721
341.....6866
510.....6723
520 .....5318, 5319, 5525, 6723
522.....5319, 5526
1309.....5914
1310.....5914
1313.....5914

**Proposed Rules:**

Ch. I.....5700

**23 CFR**

627.....6866
630.....6869
635.....6869
771.....6869

**24 CFR**

18.....6096

**26 CFR**

1.....6874, 7155
20.....7156
602.....6874

**Proposed Rules:**

20.....7188
1.....5355, 6749

**28 CFR**

512.....6660

**29 CFR**

Ch. V.....6690
24.....6690
215.....6090
220.....6090
401.....6090
402.....6090
403.....6090
404.....6090
405.....6090
406.....6090
408.....6090
409.....6090
417.....6090
451.....6090
452.....6090
453.....6090
457.....6090
458.....6090
459.....6090
825.....6690
1904.....6434
1977.....6690
4044.....6874

**Proposed Rules:**

520.....7094
521.....7094
522.....7094
523.....7094
527.....7094

**30 CFR**

250 .....5320, 5329, 7298
936.....6041

**Proposed Rules:**

56.....5554
57.....5554
62.....5554
70.....5554
71.....5554
206.....5355, 7189
208.....5355, 7189
251.....6149
914.....7189, 7192

**31 CFR**

**Proposed Rules:**

500.....6896
505.....6896
515.....6896

**32 CFR**

255.....5332
340.....5332

**Proposed Rules:**

247.....4947

**33 CFR**

117 .....5155, 6468, 6875
165.....5157, 5526
330.....6877
404.....5917
407.....5917

**Proposed Rules:**

154.....5356
155.....5356

**34 CFR**

350.....5712
351.....5712
352.....5712
353.....5712
355.....5712
357.....5712
360.....5712
361.....6308
363.....6308
376.....6308
379.....5684
380.....6308

**36 CFR**

**Proposed Rules:**

223.....5949
668.....7334

**38 CFR**

3.....5528
17.....6121
36.....5530

**40 CFR**

52 .....6126, 6127, 6129, 6619, 6724, 7157, 7160, 7163
58.....6728
60.....6619
80.....7164
180 .....4911, 5333, 6486
260.....6486
261.....6486
262.....6486
263.....6486
264.....6486
265.....6486
266.....6486
270.....6486
721.....5157

**Proposed Rules:**

52 .....5357, 5361, 5555, 6159, 6160, 6750, 7193, 7194
80.....7197
81.....7194
180.....6750
185.....6750
186.....6750
63.....5074
72.....5370
73.....5370
74.....5370
75.....5370
77.....5370
78.....5370
81.....5555
85.....6366
89.....6366
92.....6366
180.....5370
300.....5949, 5950
721.....5196, 6160

**41 CFR**

Ch. 301.....6041
301–7.....6878
301–8.....6878
301–11.....6878

**Proposed Rules:**

Ch. 60.....6690

**42 CFR**

**Proposed Rules:**

68a.....5953

**43 CFR**

4700.....5338

**Proposed Rules:**

3400.....6910
3410.....6910
418.....7201
3420.....6910
3440.....6910
3450.....6910
3460.....6910
3470.....6910
3480.....6910
3500.....5373
3510.....5373
3520.....5373
3530.....5373
3540.....5373
3550.....5373
3560.....5373
3570.....5373
6300.....7203
8560.....7203

**44 CFR**

64.....4915, 5534
65 .....5734, 6878, 6880
67.....6883
70.....5734
72.....5734
73.....6886

**Proposed Rules:**

67.....6910
206.....5957

**46 CFR**

349.....5158
502.....6132
510.....6132

**Proposed Rules:**

10.....5197
12.....5197
15.....5197

**47 CFR**

1.....4917, 5757
25.....5924
43.....5160, 5535
53.....5074
61.....5757
63.....5160
64.....5160, 5535
65.....5160
73 .....5339, 5778, 6887
74.....4920, 5339
76.....6491
78.....4920
101.....4920

**Proposed Rules:**

25.....4959
26.....4959
36.....5373, 5957
51.....5373, 5957
61.....5373, 5957
63.....4965
69.....5373, 5957
73 .....4959, 5788, 5789, 5790, 5791, 6926, 6927, 6928, 6929, 7203
76.....4959, 7203
100.....4959

**48 CFR**

Ch. 1.....6619
212.....5779
225.....5779
244.....5779
252.....5779
570.....5166
1552.....5347

**49 CFR**

31.....6719
578.....5167

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT TODAY

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Interstate transportation of animals and animal products (quarantine):

Brucellosis in cattle, bison, and swine--

Rapid automated presumptive test; disease status determination; published 1-17-97

**AGRICULTURE DEPARTMENT**

**Grain Inspection, Packers and Stockyards Administration**

Fees:

Inspection services; commodities other than rice; published 12-18-96

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone--

Technical amendment; correction and clarification; published 1-15-97

**DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Contract clauses requiring flowdown to subcontractors; reduction; published 12-20-96

Contractor overhead--

Certification; published 12-20-96

Cost-type contracts; allowable cost and payment clause; published 12-20-96

Impairment of long-lived assets; gains and losses; published 12-20-96

Individual and class deviations; published 12-20-96

Mentor protege program; published 12-20-96

**ENERGY DEPARTMENT**

Acquisition regulations:

Miscellaneous amendments; published 1-16-97

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Colorado; published 1-16-97

Idaho; published 12-18-96

Michigan; published 12-18-96

Pennsylvania; published 12-20-96

**INTERIOR DEPARTMENT**

**National Park Service**

Special regulations:

Badlands National Park, SD; commercial vehicle traffic; published 1-17-97

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Pratt & Whitney; published 12-19-96

**TRANSPORTATION DEPARTMENT**

**Research and Special Programs Administration**

Pipeline safety:

Natural gas transportation, etc.--

Service lines; excess flow valve performance standards; reconsideration petition; published 1-17-97

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Estate and gift taxes:

Marital deduction; published 2-18-97

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Grapes grown in California; comments due by 2-18-97; published 1-17-97

Olives grown in California; comments due by 2-18-97; published 1-17-97

**AGRICULTURE DEPARTMENT**

**Food and Consumer Service**

Food stamp program:

Anticipating income and reporting changes; comments due by 2-18-97; published 12-17-96

**AGRICULTURE DEPARTMENT**

**Food Safety and Inspection Service**

Meat and poultry inspection:

Pathogen reduction; hazard analysis and critical control point (HACCP) systems

Potentially hazardous foods; transportation and storage requirements; comments due by 2-20-97; published 11-22-96

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone--

Bering Sea and Aleutian Islands groundfish; comments due by 2-18-97; published 1-2-97

Atlantic shark; comments due by 2-18-97; published 12-27-96

Caribbean, Gulf, and South Atlantic fisheries--

South Atlantic shrimp; comments due by 2-20-97; published 1-6-97

**COMMODITY FUTURES TRADING COMMISSION**

Commission records and information; open Commission meetings; comments due by 2-18-97; published 12-19-96

**DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Contractor qualifications; ≥manufacturer≥ or ≥regular dealer≥ requirement; comments due by 2-18-97; published 12-20-96

Cost accounting standards; inapplicability to contracts and subcontracts for commercial items; comments due by 2-18-97; published 12-20-96

Data Universal Numbering System; use as primary contractor identification; comments due by 2-18-97; published 12-20-96

Local government lobbying costs; comments due by 2-18-97; published 12-20-96

Minority small business and capital ownership development program; comments due by 2-18-97; published 12-20-96

**DEFENSE DEPARTMENT**

**Engineers Corps**

Danger zones and restricted areas:

Persons subject to restrictions; clarification; comments due by 2-18-97; published 12-20-96

**EDUCATION DEPARTMENT**

Postsecondary education:

Student assistance general provisions--

Compliance audits and financial responsibility standards; comments due by 2-18-97; published 12-18-96

**ENERGY DEPARTMENT**

Occupational radiation protection:

Primary standards amendments; comments due by 2-18-97; published 12-23-96

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

Natural Gas Policy Act:

Interstate natural gas pipelines--

Business practice standards; comments due by 2-21-97; published 1-8-97

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs:

Ambient air quality standards, national--

Ozone and particulate matter; comments due by 2-18-97; published 12-13-96

Ozone and particulate matter; comments due by 2-18-97; published 12-13-96

Ozone and particulate matter; comments due by 2-18-97; published 12-13-96

Ozone and particulate matter, and regional haze program development; comments due by 2-18-97; published 12-13-96

Particulate matter; comments due by 2-18-97; published 12-13-96

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 2-21-97; published 1-22-97

Colorado; comments due by 2-18-97; published 1-17-97

Florida; comments due by 2-18-97; published 1-17-97

Illinois; comments due by 2-20-97; published 1-21-97

Indiana; comments due by 2-18-97; published 1-17-97

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| **5 Parts:** | | | |
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| 0–26 | (869–028–00007–0) | 22.00 | Jan. 1, 1996 |
| 27–45 | (869–028–00008–8) | 11.00 | Jan. 1, 1996 |
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| 52 | (869–028–00010–0) | 5.00 | Jan. 1, 1996 |
| 53–209 | (869–028–00011–8) | 17.00 | Jan. 1, 1996 |
| 210–299 | (869–028–00012–6) | 35.00 | Jan. 1, 1996 |
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| **9 Parts:** | | | |
| 1–199 | (869–028–00025–8) | 30.00 | Jan. 1, 1996 |
| 200–End | (869–028–00026–6) | 25.00 | Jan. 1, 1996 |
| **10 Parts:** | | | |
| 0–50 | (869–028–00027–4) | 30.00 | Jan. 1, 1996 |
| 51–199 | (869–028–00028–2) | 24.00 | Jan. 1, 1996 |
| 200–399 | (869–028–00029–1) | 5.00 | Jan. 1, 1996 |
| 400–499 | (869–028–00030–4) | 21.00 | Jan. 1, 1996 |
| 500–End | (869–028–00031–2) | 34.00 | Jan. 1, 1996 |
| **11** | (869–028–00032–1) | 15.00 | Jan. 1, 1996 |
| **12 Parts:** | | | |
| 1–199 | (869–028–00033–9) | 12.00 | Jan. 1, 1996 |
| 200–219 | (869–028–00034–7) | 17.00 | Jan. 1, 1996 |
| 220–299 | (869–028–00035–5) | 29.00 | Jan. 1, 1996 |
| 300–499 | (869–028–00036–3) | 21.00 | Jan. 1, 1996 |
| 500–599 | (869–028–00037–1) | 20.00 | Jan. 1, 1996 |
| 600–End | (869–028–00038–0) | 31.00 | Jan. 1, 1996 |
| **13** | (869–028–00039–8) | 18.00 | Mar. 1, 1996 |
| **14 Parts:** | | | |
| 1–59 | (869–028–00040–1) | 34.00 | Jan. 1, 1996 |
| 60–139 | (869–028–00041–0) | 30.00 | Jan. 1, 1996 |
| 140–199 | (869–028–00042–8) | 13.00 | Jan. 1, 1996 |
| 200–1199 | (869–028–00043–6) | 23.00 | Jan. 1, 1996 |
| 1200–End | (869–028–00044–4) | 16.00 | Jan. 1, 1996 |
| **15 Parts:** | | | |
| 0–299 | (869–028–00045–2) | 16.00 | Jan. 1, 1996 |
| 300–799 | (869–028–00046–1) | 26.00 | Jan. 1, 1996 |
| 800–End | (869–028–00047–9) | 18.00 | Jan. 1, 1996 |
| **16 Parts:** | | | |
| 0–149 | (869–028–00048–7) | 6.50 | Jan. 1, 1996 |
| 150–999 | (869–028–00049–5) | 19.00 | Jan. 1, 1996 |
| 1000–End | (869–028–00050–9) | 26.00 | Jan. 1, 1996 |
| **17 Parts:** | | | |
| 1–199 | (869–028–00052–5) | 21.00 | Apr. 1, 1996 |
| 200–239 | (869–028–00053–3) | 25.00 | Apr. 1, 1996 |
| 240–End | (869–028–00054–1) | 31.00 | Apr. 1, 1996 |
| **18 Parts:** | | | |
| 1–149 | (869–028–00055–0) | 17.00 | Apr. 1, 1996 |
| 150–279 | (869–028–00056–8) | 12.00 | Apr. 1, 1996 |
| 280–399 | (869–028–00057–6) | 13.00 | Apr. 1, 1996 |
| 400–End | (869–028–00058–4) | 11.00 | Apr. 1, 1996 |
| **19 Parts:** | | | |
| 1–140 | (869–028–00059–2) | 26.00 | Apr. 1, 1996 |
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| 200–End | (869–028–00061–4) | 12.00 | Apr. 1, 1996 |
| **20 Parts:** | | | |
| 1–399 | (869–028–00062–2) | 20.00 | Apr. 1, 1996 |
| ●400–499 | (869–028–00063–1) | 35.00 | Apr. 1, 1996 |
| 500–End | (869–028–00064–9) | 32.00 | Apr. 1, 1996 |
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| ●200–299 | (869–028–00068–1) | 7.00 | Apr. 1, 1996 |
| ●300–499 | (869–028–00069–0) | 50.00 | Apr. 1, 1996 |
| ●500–599 | (869–028–00070–3) | 28.00 | Apr. 1, 1996 |
| ●600–799 | (869–028–00071–1) | 8.50 | Apr. 1, 1996 |
| ●800–1299 | (869–028–00072–0) | 30.00 | Apr. 1, 1996 |
| ●1300–End | (869–028–00073–8) | 14.00 | Apr. 1, 1996 |
| **22 Parts:** | | | |
| 1–299 | (869–028–00074–6) | 36.00 | Apr. 1, 1996 |
| 300–End | (869–028–00075–4) | 24.00 | Apr. 1, 1996 |
| **23** | (869–028–00076–2) | 21.00 | Apr. 1, 1996 |
| **24 Parts:** | | | |
| 0–199 | (869–028–00077–1) | 30.00 | May 1, 1996 |
| 200–219 | (869–028–00078–9) | 14.00 | May 1, 1996 |
| 220–499 | (869–028–00079–7) | 13.00 | May 1, 1996 |
| 500–699 | (869–028–00080–1) | 14.00 | May 1, 1996 |
| 700–899 | (869–028–00081–9) | 13.00 | May 1, 1996 |
| 900–1699 | (869–028–00082–7) | 21.00 | May 1, 1996 |
| 1700–End | (869–028–00083–5) | 14.00 | May 1, 1996 |
| **25** | (869–028–00084–3) | 32.00 | May 1, 1996 |
| **26 Parts:** | | | |
| §§ 1.0-1–1.60 | (869–028–00085–1) | 21.00 | Apr. 1, 1996 |
| §§ 1.61–1.169 | (869–028–00086–0) | 34.00 | Apr. 1, 1996 |
| §§ 1.170–1.300 | (869–028–00087–8) | 24.00 | Apr. 1, 1996 |
| §§ 1.301–1.400 | (869–028–00088–6) | 17.00 | Apr. 1, 1996 |
| §§ 1.401–1.440 | (869–028–00089–4) | 31.00 | Apr. 1, 1996 |
| §§ 1.441-1.500 | (869-028-00090-8) | 22.00 | Apr. 1, 1996 |
| §§ 1.501–1.640 | (869–028–00091–6) | 21.00 | Apr. 1, 1996 |
| §§ 1.641–1.850 | (869–028–00092–4) | 25.00 | Apr. 1, 1996 |
| §§ 1.851–1.907 | (869–028–00093–2) | 26.00 | Apr. 1, 1996 |
| §§ 1.908–1.1000 | (869–028–00094–1) | 26.00 | Apr. 1, 1996 |
| §§ 1.1001–1.1400 | (869–028–00095–9) | 26.00 | Apr. 1, 1996 |
| §§ 1.1401–End | (869–028–00096–7) | 35.00 | Apr. 1, 1996 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 2–29 | (869–028–00097–5) | 28.00 | Apr. 1, 1996 |
| 30–39 | (869–028–00098–3) | 20.00 | Apr. 1, 1996 |
| 40–49 | (869–028–00099–1) | 13.00 | Apr. 1, 1996 |
| 50–299 | (869–028–00100–9) | 14.00 | Apr. 1, 1996 |
| 300–499 | (869–028–00101–7) | 25.00 | Apr. 1, 1996 |
| 500–599 | (869–028–00102–5) | 6.00 | [4] Apr. 1, 1990 |
| 600–End | (869–028–00103–3) | 8.00 | Apr. 1, 1996 |
| **27 Parts:** | | | |
| 1–199 | (869–028–00104–1) | 44.00 | Apr. 1, 1996 |
| 200–End | (869–028–00105–0) | 13.00 | Apr. 1, 1996 |
| **28 Parts:** | | | |
| 1-42 | (869–028–00106–8) | 35.00 | July 1, 1996 |
| 43-end | (869-028-00107-6) | 30.00 | July 1, 1996 |
| **29 Parts:** | | | |
| 0–99 | (869–028–00108–4) | 26.00 | July 1, 1996 |
| 100–499 | (869–028–00109–2) | 12.00 | July 1, 1996 |
| 500–899 | (869–028–00110–6) | 48.00 | July 1, 1996 |
| 900–1899 | (869–028–00111–4) | 20.00 | July 1, 1996 |
| 1900–1910 (§§ 1900 to 1910.999) | (869–028–00112–2) | 43.00 | July 1, 1996 |
| 1910 (§§ 1910.1000 to end) | (869–028–00113–1) | 27.00 | July 1, 1996 |
| 1911–1925 | (869–028–00114–9) | 19.00 | July 1, 1996 |
| 1926 | (869–028–00115–7) | 30.00 | July 1, 1996 |
| 1927–End | (869–028–00116–5) | 38.00 | July 1, 1996 |
| **30 Parts:** | | | |
| 1–199 | (869–028–00117–3) | 33.00 | July 1, 1996 |
| 200–699 | (869–028–00118–1) | 26.00 | July 1, 1996 |
| 700–End | (869–028–00119–0) | 38.00 | July 1, 1996 |
| **31 Parts:** | | | |
| 0–199 | (869–028–00120–3) | 20.00 | July 1, 1996 |
| 200–End | (869–028–00121–1) | 33.00 | July 1, 1996 |
| **32 Parts:** | | | |
| 1–39, Vol. I | | 15.00 | [2] July 1, 1984 |
| 1–39, Vol. II | | 19.00 | [2] July 1, 1984 |
| 1–39, Vol. III | | 18.00 | [2] July 1, 1984 |
| 1–190 | (869–028–00122–0) | 42.00 | July 1, 1996 |
| 191–399 | (869–028–00123–8) | 50.00 | July 1, 1996 |
| 400–629 | (869–028–00124–6) | 34.00 | July 1, 1996 |
| 630–699 | (869–028–00125–4) | 14.00 | [5] July 1, 1991 |
| 700–799 | (869–028–00126–2) | 28.00 | July 1, 1996 |
| 800–End | (869–028–00127–1) | 28.00 | July 1, 1996 |
| **33 Parts:** | | | |
| 1–124 | (869–028–00128–9) | 26.00 | July 1, 1996 |
| 125–199 | (869–028–00129–7) | 35.00 | July 1, 1996 |
| 200–End | (869–028–00130–1) | 32.00 | July 1, 1996 |
| **34 Parts:** | | | |
| 1–299 | (869–028–00131–9) | 27.00 | July 1, 1996 |
| 300–399 | (869–028–00132–7) | 27.00 | July 1, 1996 |
| 400–End | (869–028–00133–5) | 46.00 | July 1, 1996 |
| **35** | (869–028–00134–3) | 15.00 | July 1, 1996 |
| **36 Parts** | | | |
| 1–199 | (869–028–00135–1) | 20.00 | July 1, 1996 |
| 200–End | (869–028–00136–0) | 48.00 | July 1, 1996 |
| **37** | (869–028–00137–8) | 24.00 | July 1, 1996 |
| **38 Parts:** | | | |
| 0–17 | (869–028–00138–6) | 34.00 | July 1, 1996 |
| 18–End | (869–028–00139–4) | 38.00 | July 1, 1996 |
| **39** | (869–028–00140–8) | 23.00 | July 1, 1996 |
| **40 Parts:** | | | |
| ●1–51 | (869–028–00141–6) | 50.00 | July 1, 1996 |
| ●52 | (869–028–00142–4) | 51.00 | July 1, 1996 |
| ●53–59 | (869–028–00143–2) | 14.00 | July 1, 1996 |
| 60 | (869-028-00144-1) | 47.00 | July 1, 1996 |
| ●61–71 | (869–028–00145–9) | 47.00 | July 1, 1996 |
| ●72–80 | (869–028–00146–7) | 34.00 | July 1, 1996 |
| ●81–85 | (869–028–00147–5) | 31.00 | July 1, 1996 |
| 86 | (869–028–00148–3) | 46.00 | July 1, 1996 |
| ●87-135 | (869–028–00149–1) | 35.00 | July 1, 1996 |
| ●136–149 | (869–028–00150–5) | 35.00 | July 1, 1996 |
| ●150–189 | (869–028–00151–3) | 33.00 | July 1, 1996 |
| ●190–259 | (869–028–00152–1) | 22.00 | July 1, 1996 |
| ●260–299 | (869–028–00153–0) | 53.00 | July 1, 1996 |
| ●300–399 | (869–028–00154–8) | 28.00 | July 1, 1996 |
| ●400–424 | (869–028–00155–6) | 33.00 | July 1, 1996 |
| ●425–699 | (869–028–00156–4) | 38.00 | July 1, 1996 |
| ●700–789 | (869–028–00157–2) | 33.00 | July 1, 1996 |
| ●790–End | (869–028–00158–7) | 19.00 | July 1, 1996 |
| **41 Chapters:** | | | |
| 1, 1–1 to 1–10 | | 13.00 | [3] July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | | 13.00 | [3] July 1, 1984 |
| 3–6 | | 14.00 | [3] July 1, 1984 |
| 7 | | 6.00 | [3] July 1, 1984 |
| 8 | | 4.50 | [3] July 1, 1984 |
| 9 | | 13.00 | [3] July 1, 1984 |
| 10–17 | | 9.50 | [3] July 1, 1984 |
| 18, Vol. I, Parts 1–5 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. II, Parts 6–19 | | 13.00 | [3] July 1, 1984 |
| 18, Vol. III, Parts 20–52 | | 13.00 | [3] July 1, 1984 |
| 19–100 | | 13.00 | [3] July 1, 1984 |
| 1–100 | (869–028–00159–9) | 12.00 | July 1, 1996 |
| 101 | (869–028–00160–2) | 36.00 | July 1, 1996 |
| 102–200 | (869–028–00161–1) | 17.00 | July 1, 1996 |
| 201–End | (869–028–00162–9) | 17.00 | July 1, 1996 |
| **42 Parts:** | | | |
| ●1–399 | (869–028–00163–7) | 32.00 | Oct. 1, 1996 |
| ●400–429 | (869–028–00164–5) | 34.00 | Oct. 1, 1996 |
| ●430–End | (869–028–00165–3) | 44.00 | Oct. 1, 1996 |
| **43 Parts:** | | | |
| ●1–999 | (869–028–00166–1) | 30.00 | Oct. 1, 1996 |
| ●1000–End | (869–028–00167–0) | 45.00 | Oct. 1, 1996 |
| ●**44** | (869–028–00168–8) | 31.00 | Oct. 1, 1996 |
| **45 Parts:** | | | |
| ●1–199 | (869–028–00169–6) | 28.00 | Oct. 1, 1996 |
| 200–499 | (869–028–00170–0) | 14.00 | [6] Oct. 1, 1995 |
| ●500–1199 | (869–028–00171–8) | 30.00 | Oct. 1, 1996 |
| ●1200–End | (869–026–00173–1) | 26.00 | Oct. 1, 1995 |
| **46 Parts:** | | | |
| ●1–40 | (869–028–00173–4) | 26.00 | Oct. 1, 1996 |
| ●41–69 | (869–028–00174–2) | 21.00 | Oct. 1, 1996 |
| ●70–89 | (869–028–00175–1) | 11.00 | Oct. 1, 1996 |
| ●90–139 | (869–028–00176–9) | 26.00 | Oct. 1, 1996 |
| ●140–155 | (869–028–00177–7) | 15.00 | Oct. 1, 1996 |
| 156–165 | (869–026–00179–1) | 17.00 | Oct. 1, 1995 |
| ●166–199 | (869–028–00179–3) | 22.00 | Oct. 1, 1996 |
| ●200–499 | (869–028–00180–7) | 21.00 | Oct. 1, 1996 |
| *●500–End | (869–028–00181–5) | 17.00 | Oct. 1, 1996 |
| **47 Parts:** | | | |
| ●0–19 | (869–026–00183–9) | 25.00 | Oct. 1, 1995 |
| ●20–39 | (869–026–00184–7) | 21.00 | Oct. 1, 1995 |
| ●40–69 | (869–026–00185–5) | 14.00 | Oct. 1, 1995 |
| ●70–79 | (869–028–00185–8) | 33.00 | Oct. 1, 1996 |
| ●80–End | (869–026–00187–1) | 30.00 | Oct. 1, 1995 |
| **48 Chapters:** | | | |
| ●1 (Parts 1–51) | (869–028–00187–4) | 45.00 | Oct. 1, 1996 |
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| ●2 (Parts 201–251) | (869–028–00189–1) | 22.00 | Oct. 1, 1996 |
| ●2 (Parts 252–299) | (869–028–00190–4) | 16.00 | Oct. 1, 1996 |
| ●3–6 | (869–026–00192–8) | 23.00 | Oct. 1, 1995 |
| ●7–14 | (869–028–00192–1) | 29.00 | Oct. 1, 1996 |
| 15–28 | (869–028–00193–9) | 38.00 | Oct. 1, 1996 |
| ●29–End | (869–028–00194–7) | 25.00 | Oct. 1, 1996 |
| **49 Parts:** | | | |
| ●1–99 | (869–028–00195–5) | 32.00 | Oct. 1, 1996 |
| 100–177 | (869–026–00197–9) | 34.00 | Oct. 1, 1995 |
| ●186–199 | (869–028–00197–1 | 14.00 | Oct. 1, 1996 |
| *200–399 | (869–028–00198–0) | 39.00 | Oct. 1, 1996 |
| 400–999 | (869–026–00200–2) | 40.00 | Oct. 1, 1995 |
| ●1000–1199 | (869–028–00200–5) | 23.00 | Oct. 1, 1996 |
| ●1200–End | (869–028–00201–3) | 15.00 | Oct. 1, 1996 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| **50 Parts:** | | | |
| 1–199 | (869–026–00203–7) | 26.00 | Oct. 1, 1995 |
| ●200–599 | (869–026–00204–5) | 22.00 | Oct. 1, 1995 |
| ●600–End | (869–026–00205–3) | 27.00 | Oct. 1, 1995 |
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.